

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 77-4196

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

and

ELMSFORD SHEET METAL WORKS, INC.,
Intervenor,

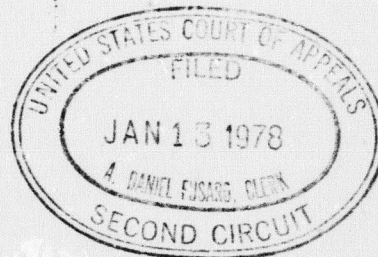
v.

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 38,,
Respondent.

ON APPLICATION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

APPENDIX

ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570



PAGINATION AS IN ORIGINAL COPY

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II

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Sheet Metal Workers Int'l
Association, Local Union No. 38
Board Case No. 2-CB-6415

9.23.76 Charge filed

11. 5.76 Complaint and Notice of hearing dated

11.11.76 Respondent's Answer, dated

1.12.77 Stipulation entered into by the General Counsel, Charging Party,
and Respondent

2.16.77 Board's Order granting motion, approving stipulation and transferring
proceeding to the Board dated

2.18.77 Respondent's Motion, dated

2.24.77 Board's letter advising that Respondent's motion was inappropriate
and could not be entertained and that the date fixed for filing
briefs stands, dated

8.29.77 Decision and Order of the National Labor Relations Board dated

14
107

FILE MP
EXC. Sec. 0

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 38

and

CASE NO. 2-CB-6415

ELMSFORD SHEET METAL WORKS, INC.

STIPULATION

WHEREAS, Sheet Metal Workers International Association, Local Union No. 38, herein called Local 38, Elmsford Sheet Metal Works, Inc., herein called Charging Party, and the General Counsel of the National Labor Relations Board, being all of the parties to this proceeding, desire to petition the National Labor Relations Board, in order to effectuate the purposes of the National Labor Relations Act, 29 U.S.C. Section 151, et seq., herein called the Act, and to avoid unnecessary costs and delay, to exercise its powers under Section 102.50 of the Rules and Regulations of the Board. Series 9, as amended, to transfer this proceeding to the Board;

NOW, THEREFORE, IT HEREBY IS STIPULATED by and between the parties as follows:

1. The parties hereby acknowledge receipt and due service of the Charge, the Complaint and Notice of Hearing, and Respondent's Answer.
2. The parties agree that the Charge, the Complaint, the Answer, herein marked as General Counsel Exhibit 1(a) to (c) and made a part hereof, this Stipulation, and the Exhibits annexed hereto constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties.

The parties agree that they waive a hearing before an Administrative Law Judge, the making of findings of fact and conclusions of law by an Administrative Law Judge and the issuance of an Administrative Law Judge's decision, and desire to submit this case for findings of fact, conclusions of law and the issuance of an Order directly by the Board. In addition to the allegations of the complaint admitted by Respondent in its Answer

the Board may make findings on the basis of facts contained in the exhibits annexed hereto.

4. In the event the Board transfers this proceeding to itself the Parties request that the Board set the following schedule for the filing of briefs: Filing of Brief: February 8, 1977. Filing of Reply Briefs: February 18, 1977.

5. Local 38 admits the allegations contained in paragraph 2 of the Complaint.

6. On or about June 30, 1975 Charging Party sent a letter to the Association a copy of which is annexed hereto as Exhibit 2.

7. A copy of the collective bargaining agreement entered into July 1, 1975, referred to in paragraph 7(b) of the Complaint is annexed hereto as Exhibit 3.

8. A copy of the collective bargaining agreement entered into September 18, 1975, referred to in paragraph 8(b) of the Complaint is annexed hereto as Exhibit 4.

9. On or about September 3, 1975 the Charging Party sent a letter to the Association, a copy of which is annexed hereto as Exhibit 5.

10. On or about March 26, 1976, Charging Party sent a letter to Local 38, a copy of which is annexed hereto as Exhibit 6.

11. On or about April 26, 1976 Local 38 sent a letter to Charging Party, a copy of which is annexed hereto as Exhibit 7.

12. On or about April 26, 1976 Local 38 sent a letter to "Mr. Allen, State of New York, State Mediation Board", a copy of which is annexed hereto as Exhibit 8.

13. On or about April 26, 1976, Local 38 sent a letter to Federal Mediation and Conciliation Service, a copy of which is annexed hereto as Exhibit 9.

14. On or about May 5, 1976, Local 38 sent a letter to Charging Party, a copy of which is annexed hereto as Exhibit 10.

15. On or about May 11, 1976, the first negotiation session was held between Local 38 and Charging Party. A copy of the minutes of that

O O 3 O O

session reflecting the events which occurred there is annexed hereto as Exhibit 11.

16. On or about June 7, 1976, the second negotiation session was held between Local 38 and Charging Party. A copy of the minutes of that session reflecting the events which occurred there is annexed hereto as Exhibit 12.

17. On or about July 27, 1976, a sub-committee of the National Joint Adjustment Board (hereinafter NJAB) met pursuant to procedures set forth in Article X, Section 8 of Exhibit 3 and issued a decision. A copy of the Decision is annexed hereto as Exhibit 13.

18. On or about August 23, 1976, Local 38 sent a letter to Charging Party, a copy of which is annexed hereto as Exhibit 14.

19. On or about August 30, 1976, the third negotiation session was held between Local 38 and Charging Party. A copy of the minutes of that session reflecting the events which occurred there is annexed hereto as Exhibit 15.

20. On or about August 31, 1976, Local 38 sent a letter to Charging Party, a copy of which is annexed hereto as Exhibit 16.

21. On or about September 7, 1976, the fourth negotiation session was held between Local 38 and Charging Party. A copy of the minutes of that session reflecting the events which occurred there is annexed hereto as Exhibit 17.

22. On or about September 10, 1976, Local 38 sent a letter to David S. Turner, General Secretary-Treasurer Sheet Metal Workers International Association, a copy of which is annexed hereto as Exhibit 18.

23. On or about November 9, 1976, NJAB met pursuant to a request by Local 38 as set forth in Exhibit 18. A copy of the Decision of the NJAB is annexed hereto as Exhibit 19.

24. On or about November 24, 1976, Local 38 sent a letter to Charging Party, a copy of which is annexed hereto as Exhibit 20.

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25. On or about November 26, 1976, Local 38 sent a letter to individuals employed by Charging Party in the unit described in paragraph 6 of the Complaint herein, a copy of which is annexed hereto as Exhibit 21.

26. On or about December 1, 1976, Counsel for the Charging Party sent a letter to the National Labor Relations Board, Region 2, a copy of which is annexed hereto as Exhibit 22.

27. This stipulation is made without prejudice to any objection that any party may have as the relevance, materiality, or competency of any fact stated herein or to any exhibit referred to herein and any objection for the aforementioned reasons may be made by any party in its brief to the Board.

By Irwin M. Portnoy Jan. 12, 1977
Irwin M. Portnoy Date
Counsel for the General Counsel
National Labor Relations Board
Region 2

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION LOCAL UNION NO. 38

By Charles V. Heitel 1/3/77
Date

ELASFORD SHEET METAL WORKS, INC.

By John H. Shover, Jr. 1/12/77
Date

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LIST OF EXHIBITS

Ex. 1(a) to (c)	Formal Papers consisting of the Charge the Complaint and Notice of Hearing and Respondent's Answer.
Ex. 2	Letter dated June 30, 1975 from Charging Party to Association.
Ex. 3	Copy of collective bargaining agreement dated July 1, 1975, between Local 38 and Association.
Ex. 4	Copy of collective bargaining agreement between Local 38 and Charging Party dated September 18, 1975.
Ex. 5	Letter dated September 3, 1975, from Charging Party to the Association.
Ex. 6	Letter dated March 26, 1976, from Charging Party to Local 38.
Ex. 7	Letter dated April 26, 1976, from Local 38 to Charging Party.
Ex. 8	Letter dated April 26, 1976, from Local 38 to New York State Mediation Board.
Ex. 9	Letter dated April 26, 1976, from Local 38 to Federal Mediation and Conciliation Service.
Ex. 10	Letter dated May 5, 1976, from Local 38 to Charging Party.
Ex. 11	Minutes of negotiation session held May 11, 1976.
Ex. 12	Minutes of negotiation session held June 7, 1976.
Ex. 13	Decision of sub committee of National Joint Adjustment Board dated July 27, 1976.
Ex. 14	Letter dated August 23, 1976, from Local 38 to Charging Party.
Ex. 15	Minutes of negotiation session held August 30, 1976.
Ex. 16	Letter dated August 31, 1976, from Local 38 to Charging Party.
Ex. 17	Minutes of fourth negotiation session held September 7, 1976.
Ex. 18	Letter dated September 10, 1976, from Local 38 to David S. Turner.
Ex. 19	A copy of decision of National Joint Adjustment Board dated November 9, 1976.
Ex. 20	Letter dated November 24, 1976, from Local 38 to Charging Party.
Ex. 21	Letters dated November 25, 1976 to individuals employed by Charging Party.
Ex. 22	Letter dated December 1, 1976, from Charging Party's attorney to Region 2, Board.

FORM NLR-250
(4-73)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
D.M.H. No. C-40990-1

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, union, or individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No.

2-CB-

6-1115

Date Filed

September 23, 1976

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name

Sheet Metal Workers International Association

b. Union Representative to Contact

Charles H. Hentel

c. Phone No.

914-759-

Local Union No. 38

d. Address (Street, city, State and ZIP code)

893 Washington Street, Peekskill, N.Y. 10566

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1) (B) & (3) of the National Labor Relations Act, and

these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

- (1) Since on or about September 10, 1976, and continuously thereafter, the above-named labor organization, by its officers, agents and representatives has restrained and coerced Elmsford Sheet Metal Works, Inc., an Employer, in the selection of its representatives for the purpose of collective-bargaining by requiring that said Employer delegate to the Sheet Metal and Roofing Employees Association of South East New York, Inc., Sheet Metal Workers' International Association, Sheet Metal and Air Conditioning Contractors, National Association, Inc. and the National Joint Adjustment Board, its authority to negotiate collective-bargaining agreements with the above-named labor organization, notwithstanding fact that said Employer is not a member of the above-named Employer organizations.
- (2) Since on or about September 10, 1976, and at all times thereafter, the above-named labor organization chosen by a majority of the employees of Elmsford Sheet Metal Works, Inc., in an appropriate unit for the purpose of collective-bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, has refused to bargain in good faith with said Employer, by insisting that said Employer agree to make payments to the Local and National Industry Advancement Fund, which provisions are contained in the recently expired Standard Form of Union Agreement in Article VII, Section 12(b) and 13(b); and 2) and to a provision which is contained in article X, Section 8 of the recently expired Standard Form of union agreement, which require that disputes relating to contract renewals be submitted to binding resolution by the National Joint Adjustment Board.

3. Name of Employer

Elmsford Sheet Metal Works, Inc.

4. Phone No.

914-739-6300

5. Location of Plant Involved (Street, city, State and ZIP code)

4000 Arlo Lane, P.O. 64, Peekskill, N.Y. 10516

6. Employer Representative to Contact

Vincent Cervasi

7. Type of Establishment (Factory, mine, wholesaler, etc.)
Construction

8. Identify Principal Product or Service

Sheet Metal Contractors

9. No. of Workers Employed
50

10. Full Name of Party Filing Charge

Elmsford Sheet Metal Works, Inc.

11. Address of Party Filing Charge (Street, city, State and ZIP code)

4000 Arlo Lane, P.O. Box 64, Peekskill, N.Y. 10506

12. Telephone No.

914-739-6300

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By

(Signature of representative or person making charge)

President

(Title or office, if any)

/s/

4000 Arlo Lane, P.O. 64, Peekskill, N.Y. 10506

914-739-6300

(Telephone number)

September 23, 1976

(Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 38

and

CASE NO. 2-CB-6415

ELMSFORD SHEET METAL WORKS, INC.

COMPLAINT AND NOTICE OF HEARING

It having been charged by Elmsford Sheet Metal Works, Inc., herein called Elmsford, that Sheet Metal Workers International Association Local Union No. 38, herein called Local 38, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Sec. 151, et seq., herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, Region 2, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations - Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. The Charge in this proceeding was filed by Elmsford on September 23, 1976, and served by registered mail upon Local 38 on or about September 24, 1976.

2.(a) Elmsford is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of New York.

(b) At all times material herein, Elmsford has maintained its principal office and place of business at 4000 Arlo Lane, in the City of Peekskill, and State of New York, herein called the Peekskill plant, and various other places of business at job sites both within and outside the State of New York, where it is, and has been, at all times material herein, continuously engaged as a contractor in the building and construction industry in providing sheet metal contracting services and related services.

(c) During the past year, which period is representative of its annual operations generally, Elmsford, in the course and conduct of its business operations, performed services valued in excess of \$500,000, of which services valued in excess of \$50,000 were performed in, and for various

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enterprises located in, states other than the state wherein it is located.

3. Elmsford is, and has been, at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

4. Local 38 is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. Charles V. Hertel is, and has been, at all times material herein, the president and business manager of Local 38, acting on its behalf, and an agent thereof.

6. At all times material herein, Local 38 is, and has been, the recognized collective-bargaining representative, within the meaning of Section 9(a) of the Act, of the employees of Elmsford in a unit consisting of all journeymen and apprentice sheet metal employees.

7.(a) Since in or about 1952 and until in or about September 1975, Elmsford was a member of the Sheet Metal and Roofers Employer's Association of Southeastern New York, Inc., hereinafter called the Association, an association which exists for the purpose, in whole or in part, of bargaining collectively with labor organizations including, inter alia, Local 38, on behalf of its employer-members.

(b) The most recent collective-bargaining agreement between the Association and Local 38 ran for a term effective from July 1, 1975 to June 30, 1976.

8.(a) In or about September 1975, Elmsford withdrew its membership from the Association.

(b) In or about September 1975, Elmsford and Local 38 entered into an individual collective-bargaining agreement covering the employees of Elmsford in the unit described above in paragraph 6, which agreement was identical to the agreement described above in paragraph 7(b), and which ran for a term from July 1, 1975 to June 30, 1976.

9.(a) On or about May 7, 1976, Local 38 and Elmsford commenced negotiations for a new collective-bargaining agreement to replace the collective-bargaining agreement between them described above in paragraph 8(b).

(b) Negotiations for a new collective-bargaining agreement between

Elmsford and Local 38 took place in May, June, July and September 1976.

(c) At all times material herein, Elmsford designated and selected Vincent Gervari, its president, as its representative for the purposes of collective bargaining in the aforesaid negotiations.

10. During the course of bargaining described above in paragraph 9(b) and on or about September 7, 1976, and continuously since said date, Local 38, by its President and Business Manager Charles V. Hertel, demanded, as a condition of consummating any collective-bargaining agreement, that Elmsford agree to continue to include in such agreement a provision, identical to Article VII, Section 12(b) of the prior agreement described above in paragraph 8(b) which reads:

The employer shall pay the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States (IFUS) two cents (\$0.02) per hour for each hour worked on and after the effective date of this agreement by all employees of the employer covered by this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted to IFUS, 1611 North Kent Street, Arlington, Virginia, 22209, or for the purpose of transmittal, through SMREA of SENY, Inc.,

and Local 38 has refused to make any agreement with Elmsford unless such provision were so included.

11. During the course of bargaining described above in paragraph 9(b) and on or about September 7, 1976, and continuously since said date, Local 38, by the aforesaid Charles V. Hertel, demanded, as a condition of consummating any collective-bargaining agreement, that Elmsford agree to include in such agreement a provision identical to Article VII, Section 13(b) of the prior agreement described above in paragraph 8(b), which reads:

The Employer shall pay to the Sheet Metal Industry Fund of Westchester and Vicinity (hereinafter referred to as the local industry fund), 1 1/2 cents (\$0.015) per hour for each hour worked on or after the effective date of this Agreement by all employees of the employer covered by this Agreement. Payment shall be made monthly on or before the 20th day of the succeeding month,

and Local 38 has refused to make any agreement with Elmsford unless such provision were so included.

12. During the course of bargaining described above in paragraph 9(b) and on or about September 7, 1976, and continuously since said date, Local 38, by the aforesaid Charles V. Hertel, demanded, as a condition of consummating any collective-bargaining agreement, that Elmsford agree to include in such agreement a provision identical to Article X, Section 8 of the prior

agreement described above in paragraph 8(f), which reads:

" SECTION 8. In addition to the settlement of grievances arising out of interpretation or enforcement of this agreement as set forth in the preceding sections of this Article, any controversy or dispute arising out of the failure of the parties to negotiate a renewal of this agreement shall be settled as hereinafter provided:

(a) Should the negotiations for renewal of this agreement become deadlocked in the opinion of the Local Union or of the Local Contractors' Association, or both, notice to that effect shall be given to the office of the General President of Sheet Metal Workers' International Association and the national office of the Sheet Metal & Air Conditioning Contractors' National Association, Inc. If the General President of Sheet Metal Workers' International Association and the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the General President of Sheet Metal Workers' International Association and the national office of Sheet Metal and Air Conditioning Contractors' National Association, Inc., shall be promptly so notified without recommendation from the panel representatives. Should the President of Sheet Metal Workers' International Association or the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. fail or decline to appoint a panel member or should notice of failure of the panel representatives to resolve the dispute be given, the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said Board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible after the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said Board fails to reach a unanimous decision and the parties have received written notification of its failure.

(b) Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the Board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to present oral argument and to answer any questions raised by members of the Board. Any briefs filed by either party including copies of pertinent exhibits will also be exchanged between the parties in advance of the hearing.

(c) The National Joint Adjustment Board shall have the right to establish time limits which must be met with respect to each and every step or procedure contained in this section. In addition, the President of SMWIA and the Chairman of the National Labor Committee of SMACNA shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, telegram, or telephone notification.

(d) Unless a different date is agreed upon mutually between the parties or is directed by the unanimous decision of the the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement,

and Local 38 has refused to make any agreement with Elmsford unless such provision were so included.

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13. The provisions demanded by Local 38 as a condition of making a collective-bargaining agreement, as described above in paragraphs 10, 11, and 12 are not provisions respecting wages, hours, or other terms or conditions of employment within the meaning of the Act, and therefore constitute non-mandatory subjects of bargaining.

14. On or about September 10, 1976, and continuously since said date, Local 38 invoked the procedure established at Article X, Section 8 of the collective-bargaining agreement with Elmsford, described above in paragraph 8(b), with an object of compelling Elmsford to be bound to a new agreement containing the provisions described above in paragraphs 10, 11, and 12.

15. During the course of bargaining described above in paragraph 9(b), and on or about September 7, 1976, Local 38, by its conduct as described above in paragraphs 12 and 14 has attempted to cause Elmsford to designate an agency or person other than one designated by Elmsford as its representative for the purpose of collective-bargaining with Local 38.

16. By the acts described above in paragraphs 10 through 15, and by each of said acts, Local 38 refused, and is refusing, to bargain collectively with an employer, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(3) and Section 2(6) and (7) of the Act.

17. By the acts described above in paragraphs 12, 14 and 15, and by each of said acts, Local 38 restrained and coerced an employer in the selection of his representatives for the purposes of collective-bargaining and the adjustment of grievances, and thereby engaged in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(B) and Section 2(6) and (7) of the Act.

18. The acts of Local 38 described above in paragraphs 10 through 17, occurring in connection with the operations of Elmsford described above in paragraphs 2 and 3, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

PLEASE TAKE NOTICE that on the 10th day of January 1977, at 11:00 a.m., at 26 Federal Plaza, Room 3614, in the City and State of New York,

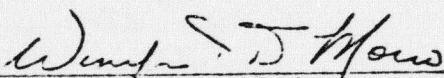
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a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise and give testimony.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the Regional Director, Region 2, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted by it to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Form NLRB-4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases is attached.

Dated at New York, New York this 5th day of November 1976.


Winifred D. Morfo, Regional Director
National Labor Relations Board, Region 2
26 Federal Plaza, Room 2614
New York, New York 10001

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 38

Case No.
2-CB-6415

- and -

ELMSFORD SHEET METAL WORKS, INC.

ANSWER

The respondent, Sheet Metal Workers International Association, Local Union No. 38, by its attorney, Delson & Gordon, Esqs., answering the Complaint herein, sets forth the following:

1. Respondent admits each and every allegation contained in paragraphs 1, 2(b), 3, 4, 5, 6, 7(a), 7(b), 8(a), 8(c) and 9(c) of the complaint herein.
2. Respondent denies each and every allegation contained in paragraphs 13, 15, 16, 17 and 18 of the complaint herein.
3. Respondent lacks knowledge and information sufficient to form a belief as to the allegations contained in paragraphs 2(a) and 2(c) of the complaint herein.
4. Respondent admits the allegations contained in paragraph 9(a) of the complaint herein, except it denies that Local 38 was seeking to replace the prior collective bargaining agreement.
5. Respondent admits the allegations contained in paragraph 9(b) of the complaint herein, except it denies that Local 38 was seeking a new collective bargaining agreement.

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6. Respondent denies the allegations contained in paragraph 10 of the complaint herein, except that it admits that Local 38 sought to bargain about Article VII, Section 12(b) of the current collective bargaining agreement.

7. Respondent denies the allegations contained in paragraph 11 of the complaint herein, except that it admits that Local 38 sought to bargain about Article VII, Section 13(b) of the current collective bargaining agreement.

8. Respondent denies the allegations contained in paragraph 12 of the complaint herein, except that it admits that Local 38 sought to bargain about Article X, Section 8 of the current agreement.

9. Respondent denies the allegations contained in paragraph 14 of the complaint herein, except that it admits that Local 38 has sought arbitration pursuant to Article X, Section 8 of the current agreement.

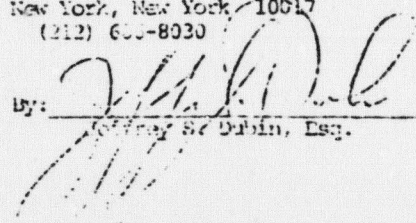
AS AID FOR A FIRST AND COMPLETE
AFFIRMATIVE DEFENSE

10. The dispute, as alleged in the complaint herein, has been referred to arbitration pursuant to the current collective bargaining agreement and the National Labor Relations Board should defer thereto.

WHEREFORE, Respondent respectfully requests that the complaint be dismissed, or alternatively, that further action herein be abated pending the decision of the arbitrators.

Dated : New York, New York
November 11, 1976

NEILON & GORDON, ESQS.
Attorneys for Respondent, Local 38
230 Park Avenue
New York, New York 10017
(212) 600-8030

By: 
Jeffrey R. Dublin, Esq.

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STATE OF NEW YORK)
COUNTY OF NEW YORK)

ss.:

DOROTHY GOLDSTEIN, being duly sworn, deposes and

says:

That your deponent is not a party to the within action, is over the age of 18 years and resides in Brooklyn, New York.

That on the 11th day of November, 1976, your deponent served the within Answer upon the following parties by depositing a true copy thereof in a stamped, properly addressed wrapper, in an official depository, under the exclusive care and custody of the United States Postal Service within the State of New York:

Elmsford Sheet Metal Works, Inc.
Att: Vincent Gervasi, President
4000 Arlo Avenue
P.O. Box 64
Peekskill, New York 10566

Singer and Silverstein, Esqs.
Att: Alan D. Singer, Esq.
190 East Post Road
White Plains, New York 10601

Sheet Metal and Roofers Employers' Assoc.
of Southeastern N.Y., Inc.
Triangle Center
Yorktown Heights, New York 10598

Dorothy Goldstein
Dorothy Goldstein

Sworn to before me this
11th day of November, 1976.

Lynn Ehrenberg
LYNN EHRENBURG
NOTARY PUBLIC, State of New York
No. 30-1206590
Qualified in Nassau County
Commission Expires March 23, 1977

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ELMSFORD SHEET METAL WORKS, INC.
HEATING - AIR CONDITIONING - VENTILATION
11.13 SOUTH BROAD STREET - PEEXSKILL, N. Y. 10866
(914) 739-6300

June 30, 1975

TO: Sheet Metal and Roofing Contractors
Association of Southeastern New York

ATT: President William Freeman

We hereby tender our resignation from your Association
effective 12 Midnight, June 30, 1975.

Very truly yours,
Elmsford Sheet Metal Works
Vincent Gervasi
Joseph Massaro

Vincent Gervasi, President
Joseph Massaro, Vice President.

EXHIBIT 2

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FORM A-675

STANDARD FORM OF UNION AGREEMENT

SHEET METAL, ROOFING, VENTILATING AND AIR CONDITIONING
CONTRACTING DIVISIONS OF THE CONSTRUCTION INDUSTRY

Agreement entered into this 1st day of July, 19 75

by and between _____

COPY

hereinafter referred to as the Employer, and Local Union No. 38 of

Sheet Metal Workers' International Association, hereinafter referred to as the Union for Westchester,
Rockland, Putnam, Dutchess, Orange, Ulster & Sullivan Counties, N. Y.

(Specify area covered by this Agreement)

ARTICLE I

SECTION 1. This agreement covers the rates of pay, rules and working conditions of all employees of the employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, dismantling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work of U.S. #10 gauge or its equivalent or lighter gauge and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the preparation of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches, and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

ARTICLE II

SECTION 1. No Employer shall subcontract or assign any of the work described herein which is to be performed at a job site to any contractor, subcontractor or other person or party who fails to agree in writing to comply with the conditions of employment contained herein including, without limitations, those relating to union security, rates of pay and working conditions, hiring and other matters covered hereby for the duration of the project.

SECTION 2. Subject to other applicable provisions of this Agreement, the Employer agrees that when subcontracting for prefabrication of materials covered herein, such prefabrication shall be subcontracted to fabricators who pay their employees engaged in such fabrication not less than the prevailing wage for comparable sheet metal fabrication, as established under provisions of this Agreement.

ARTICLE III

SECTION 1. The Employer agrees that none but journeyman and apprentice sheet metal workers shall be employed on any work described in Article I.

ARTICLE IV

SECTION 1. The Union agrees to furnish upon request by the Employer, duly qualified journeyman and apprentice sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the manner and under the conditions specified in this Agreement.

ARTICLE V

SECTION 1. The Employer agrees to require membership in the Union, as a condition of continued employment of all employees performing any of the work specified in Article I of this Agreement, within eight (8) days following the beginning of such employment or the effective date of this Agreement, whichever is the later, provided the Employer has reasonable ground for believing that membership is available to such employees on the same terms and conditions generally applicable to other members and that membership is not denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership.

SECTION 2. If during the term of this Agreement the Labor-Management Relations Act of 1947

EXHIBIT 3

shall be amended by Congress in such manner as to reduce the time within which an employee may be required to acquire union membership, such reduced time limit shall become immediately effective instead of and without regard to the time limit specified in Section 1 of this Article.

SECTION 3. The provisions of this Article shall be deemed to be of no force and effect in any state, to the extent to which the making or enforcement of such provision is contrary to law. In any state where the making and enforcement of such provision is lawful only after compliance with certain conditions precedent, this Article shall be deemed to take effect as to involved employees immediately upon compliance with such conditions.

ARTICLE VI

SECTION 1. The regular working day shall consist of seven (7) hours labor in the shop or on the job between eight (8) a.m. and ~~four~~ three p.m. and the regular working week shall consist of five (5) consecutive seven (7) hour days labor in the shop or on the job, beginning with Monday and ending with Friday of each week. All full time or part time labor performed during such hours shall be recognized as regular working hours and paid for at the regular hourly rate. Except as otherwise provided pursuant to Section 4 of this Article, all work performed outside the regular working hours and performed during the regular work week, shall be at two (2) times the regular rate.

Employees shall be at the shop or project site at scheduled starting time each day and shall remain until quitting time.

SECTION 2. New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day Washington's Birthday, Presidential & Gubernatorial Election Days or days locally observed as such, and Saturday and Sunday shall be recognized as holidays. All work performed on holidays shall be paid as follows:

Double the hourly rate

SECTION 3. It is agreed that all work performed outside of regular working hours during the regular work week and on holidays shall be performed only upon notification by the Employer to the local union in advance of scheduling such work. Preference to overtime and holiday work shall be given to men on the job on a rotation basis so as to equalize such work as nearly as possible.

SECTION 4. Shift work and the pay and conditions therefor shall be only as provided in written addendum attached to this Agreement.

ARTICLE VII

SECTION 1. When employed in a shop or on a job within the limits of see attached addendum employees shall be governed by the regular working hours specified herein and shall provide for themselves necessary transportation within the said limits from home to shop or job at starting time and from shop or job to home at quitting time, and the Employer shall provide, or pay, for all necessary additional transportation during working hours.

SECTION 2. When employed outside of the limits specified in Section 1 of this Article, and within the jurisdiction of the Union, employees shall provide transportation for themselves which will assure their arrival at the limits specified in Section 1 of this Article at regular starting time, and the Employer shall provide or pay for all additional transportation for such jobs, including transportation from such job back to the limits specified in Section 1 of this Article which will assure arrival at such limits at quitting time. As an alternative to the foregoing method, travel expense may be paid by a zone or other method of payment. If this alternative method is used, it will be as provided in a written addendum attached hereto.

ARTICLE VIII

SECTION 1. The minimum rate of wages for journeymen sheet metal workers covered by this Agreement when employed in a shop or on a job within the jurisdiction of the Union to perform any work specified in Article I of this Agreement shall be \$ see per hour, except as hereinafter specified in Section 2 of this Article. attached addenda

SECTION 2. On all work specified in Article I of this Agreement, fabricated and/or assembled by journeymen sheet metal workers and/or apprentices within the jurisdiction of this Union, or elsewhere, for erection and/or installation within the jurisdiction of any other Local Union affiliated with Sheet Metal Workers' International Association, whose established wage scale is higher than the wage scale specified in this Agreement, the higher wage scale of the job site Union shall be paid to the journeymen employed on such work in the home shop or sent to the job site.

SECTION 3. The provisions of Section 2 of this Article, Section 2 of Article II and Section 1 of Article

III shall not be applicable to the manufacture for sale to the trade or purchase of the following items:

- | | |
|--|--------------------------------------|
| 1. Ventilators | 6. Mixing (attenuation) boxes |
| 2. Louvers | 7. Plastic skylights |
| 3. Automatic and fire dampers | 8. Air diffusers, grilles, registers |
| 4. Radiator and air conditioning unit enclosures | 9. Sound attenuators |
| 5. Fabricated pipe and fittings for residential installations only | 10. Chutes |

SECTION 4. The provisions of Section 2 of this Article shall not be applicable to the manufacture for sale to the trade or purchase of PLENUMS—Double wall panels for use in construction of air housing, nor to AIR POLLUTION CONTROL SYSTEMS fabricated for the purpose of removing air pollutants, excluding air conditioning, heating and ventilating systems.

SECTION 5. Except as provided in Sections 2 and 6 of this Article, the Employer agrees that journeymen sheet metal workers hired outside of the territorial jurisdiction of this Agreement shall receive the wage scale and working conditions of the local Agreement covering the territory in which such work is performed or supervised.

SECTION 6. When the Employer has any work specified in Article I of this Agreement to be performed outside of the area covered by this Agreement and within the area covered by another Agreement with another union affiliated with the Sheet Metal Workers' International Association, and qualified sheet metal workers are available in such area, he may send no more than two (2) sheet metal workers per job into such area to perform any work which the Employer deems necessary, both of whom shall be from the employer's home jurisdiction. All additional sheet metal workers shall come from the area in which the work is to be performed. Journeymen sheet metal workers covered by this Agreement who are sent outside of the area covered by this Agreement shall be paid at least the established minimum wage scale specified in Section 1 of this Article but in no case less than the established wage scale of the local Agreement covering the territory in which such work is performed or supervised, plus all necessary transportation, travel time, board and expenses while employed in that area, and the Employer shall be otherwise governed by the established working conditions of that local Agreement. If employees are sent into an area where there is no local Agreement of the Sheet Metal Workers' International Association covering the area then the minimum conditions of the home local union shall apply.

SECTION 7. In applying the provisions of Sections 2, 5, and 6 of this Article VIII, the term "wage scale" shall include the value of all applicable hourly contractual benefits in addition to the hourly wage rate provided in said Sections.

SECTION 8. Welfare benefit contributions shall not be duplicated.

SECTION 9. Wages at the established rates specified herein shall be paid before 3:30 P. M. Friday of each week, and no more than two (2) days' pay will be withheld. However, employees when discharged, shall be paid in full.

SECTION 10. Journeymen sheet metal workers who report for work by direction of the Employer and are not placed at work, shall be entitled to two (2) hours' pay at the established rate. This provision, however, shall not apply under conditions over which the Employer has no control.

SECTION 11. Each Employer covered by this Agreement shall employ at least one (1) journeyman sheet metal worker who is not a member of the firm on all work specified in Article I of this Agreement.

SECTION 12(a). Contributions provided for in Section 12(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the sheet metal industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support, and improve the employment opportunities for employees. No part of any such payments, however, shall be used for political activities or to oppose officially stated policy, or officially endorsed programs, or to interfere in any way in the internal affairs of the Sheet Metal Workers' International Association or of any affiliated local union.

(b). The employer shall pay the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States (IFUS) two cents (\$0.02) per hour for each hour worked on and after the effective date of this agreement by all employees of the employer covered by this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted to IFUS, 1611 North Kent Street, Arlington, Virginia, 22209, or for the purpose of transmittal, through SMREA of SENY, Inc. (Name of local remitting organization)

(c). The IFUS shall submit to the Sheet Metal Workers' International Association not less often than quarter-annually written reports describing accurately and in reasonable detail, the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. At least one time per year, the IFUS shall include in such written report a financial statement attested by a certified public accountant

containing its balance sheet and detailed statement of annual receipts and disbursements. Further specific detailed information in regard to its activities or its receipts and/or expenses shall be furnished to the Sheet Metal Workers' International Association upon written request.

(d). Grievances concerning use of IFUS funds for purposes prohibited under Section 12(a) or for violations of other subsections of this Section may be processed by the Sheet Metal Workers' International Association directly to the National Joint Adjustment Board under the provisions of Article X of this Agreement. In the event such proceeding results in a deadlock, either party may, upon ten (10) days notice to the other party, submit the issue to final and binding arbitration. The Arbitrator shall be selected by the Co-Chairmen of the National Joint Adjustment Board. The Arbitrator shall be authorized to impose any remedial order he deems appropriate for violation of this Section, including termination of the employer's obligation to contribute to the IFUS. The authority of the Arbitrator is expressly limited to a determination of a deadlocked issue under this Section, (Section 12, Article VIII), and no other.

SECTION 13(a). Contributions provided for in Section 13(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the Sheet Metal Industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support, and improve the employment opportunities for employees. No part of any such payments, however, shall be used for political activities or to oppose officially stated policy or officially endorsed programs or to interfere in any way in the internal affairs of the Sheet Metal Workers' International Association or of any affiliated local union.

(b). The Employer shall pay to the Sheet Metal Industry Fund of Westchester & Vicinity (hereinafter referred to as the local industry fund), 1 1/2 cents (\$0.015) per hour for each hour worked on or after the effective date of this Agreement by all employees of the employer covered by this Agreement. Payment shall be made monthly on or before the 20th day of the succeeding month.

(c). The fund shall furnish to the Business Manager of the Union not less often than quarter-annually written reports describing in reasonable detail the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. At least one time per year, the Fund shall include in such written report, a statement attested by a certified public accountant and containing its balance sheet and detailed statement of receipts and disbursements. Further specific detailed information in regard to Fund activities or its receipts and/or disbursements shall be furnished to the Business Manager of the Union upon his written request.

(d). Grievances concerning use of local industry fund monies to which an employer shall contribute for purpose prohibited under Section 13(a) or for violations of other subsections of this Section shall be handled under the provision of Article X of this Agreement. The National Joint Adjustment Board shall be authorized to impose any remedial order for violation of this Section, including termination of the employer's obligation to contribute to the local industry fund.

SECTION 14. The employees will contribute to the National Training Fund for the Sheet Metal and Air Conditioning Industry two cents (\$0.02) per hour for each hour worked on and after the effective date of this agreement by all employees of the employer covered by this agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted to the office of the National Training Fund as designated by the Trustees of the Fund, or for purposes of collection and transmittal through

SMWIA L. U. 38

(Name of local transmittal office)

The parties agree to be bound by the Agreement and Declaration of Trust establishing said Fund and amendments thereto as may be made from time to time and hereby designate as their representatives on the Board of Trustees such Trustees as are named, together with any successors who may be appointed pursuant to said agreement.

ARTICLE IX

SECTION 1. Journeyman and apprentice sheet metal workers covered by this Agreement shall provide for themselves all necessary hand tools.

SECTION 2. Journeyman and apprentice sheet metal workers covered by this Agreement shall not be permitted or required as a condition of employment to furnish the use of automobile or other conveyance to transport men, tools, equipment or materials from shop to job, from job to job, or from job to shop; facilities for such transportation to be provided by the Employer. This provision shall not restrict the use of an automobile or other conveyance to transport its owner and personal tools from home to shop or job at starting time or from job to home at quitting time.

ARTICLE X

SECTION 1. Grievances of the Employer or the Union, arising out of interpretation or enforcement of this Agreement, shall be settled between the Employer directly involved and the duly authorized repre-

representative of the Union, if possible. An Employer may have the local Association present to act as his representative.

SECTION 2. Grievances... settled as provided in Section 1 of this Article may be appealed by either party to the Local Joint Adjustment Board having jurisdiction over the parties and such Board shall meet promptly on a date mutually agreeable to the members of the Board, but in no case more than fourteen (14) calendar days following the request for its services, unless the time is extended by mutual agreement of the parties, to render a final and binding determination, except as provided in Sections 3 and 5 of this Article. The Board shall consist of an equal number of representatives of the Union and of the local Employers' Association and both sides shall cast an equal number of votes at each meeting. The local Employers' Association, on its own initiative, may submit grievances for determination by the Board as provided in this Section.

Notice of appeal to the Local Joint Adjustment Board shall be given within thirty (30) days after termination of the procedures prescribed in Section 1 of this Article, unless the time is extended by a mutual agreement of the parties.

SECTION 3. Grievances not disposed of under the procedure prescribed in Section 2 of this Article, because of a deadlock, or failure of such Board to act, may be appealed jointly or by either party to a Panel consisting of one (1) representative appointed by the General President of Sheet Metal Workers' International Association and one (1) representative appointed by the Chairman of the Labor Relations Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. Appeals on behalf of employees shall be mailed to the General Secretary-Treasurer of the Sheet Metal Workers' International Association and those on behalf of an employer mailed to the Secretary of the Labor Committee of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Joint appeals shall be mailed to the Secretaries of both Associations. Notice of appeal to the Panel shall be given within thirty (30) days after termination of the procedures prescribed in Section 2 of this Article. Such Panel shall meet promptly, but in no event more than fourteen (14) calendar days following receipt of such appeal, unless such time is extended by mutual agreement of the Panel members. Except in case of deadlock, the decision of the Panel shall be final and binding.

Notwithstanding the provisions of Paragraph 1 of this Section, a contractor who was not a party to the labor agreement of the area in which the work in dispute is performed may appeal the decision of the Local Joint Adjustment Board, including a unanimous decision, and request a Panel hearing as set forth in Section 3 of this Article, providing such appeal is approved by both the Chairman of the Labor Relations Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. and by the General President of Sheet Metal Workers' International Association.

SECTION 4. Grievances not settled as provided in Section 3 of this Article may be appealed jointly or by either party to the National Joint Adjustment Board, as established by the Sheet Metal Workers' International Association and the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Submission shall be made and decisions rendered under such procedures as may be prescribed by such Board, from time to time, and mutually approved by the parties creating it. Copies of the procedures shall be available from, and submissions of grievances may be made to, either the General Secretary-Treasurer of Sheet Metal Workers' International Association or the Secretary of the Labor Committee of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Submissions on appeal to the National Joint Adjustment Board shall be made within thirty (30) days after termination of the procedures prescribed in Section 3 of this Article.

SECTION 5. A Local Joint Adjustment Board, Panel and the National Joint Adjustment Board are empowered to render such decisions and grant such relief to either party as they deem necessary and proper, including awards of damages or other compensation and, if it is believed warranted, to direct that the involved agreement and any other agreement or agreements between the employer and any other local union affiliated with the Sheet Metal Workers' International Association be cancelled, provided that any decision of a Local Joint Adjustment Board directing cancellation of an agreement or agreements may be appealed by the affected employer or local union as a matter of right, directly to the National Joint Adjustment Board.

SECTION 6. In the event any party fails or refuses to comply with any decision of a Local Joint Adjustment Board or Panel, without appeal, or any decision of the National Joint Adjustment Board, within thirty (30) days after notice thereof, a Local Joint Adjustment Board, Panel, or any party to the dispute may, in addition to any other legal remedies which may be available to the parties, request the National Joint Adjustment Board to cancel the involved agreement and any other agreements between the involved employer and other local unions affiliated with Sheet Metal Workers' International Association. Unless otherwise decided by unanimous vote, the National Joint Adjustment Board shall cancel such agreements if it finds the involved party to be in non-compliance with the decision in question. Requests for the Board's services shall be made in the same manner and in the same form as other appeals to the National Joint Adjustment Board and the procedure followed shall be the same except that any intermediate step or steps shall be omitted and the request made directly to the National Joint Adjustment Board.

SECTION 7. Failure to exercise the right of appeal at any step thereof within the time limit provided

therefor shall void any right of appeal applicable to the facts and remedies of the grievances involved. There shall be no cessation of work by strike or lockout during the pendency of the procedures provided for in this Article. Except in case of deadlock, the decision of the National Joint Adjustment Board shall be final and binding.

SECTION 8. In addition to the settlement of grievances arising out of interpretation or enforcement of this agreement as set forth in the preceding sections of this Article, any controversy or dispute arising out of the failure of the parties to negotiate a renewal of this agreement shall be settled as hereinafter provided:

(a) Should the negotiations for renewal of this agreement become deadlocked in the opinion of the Local Union or of the Local Contractors' Association, or both, notice to that effect shall be given to the office of the General President of Sheet Metal Workers' International Association and the national office of the Sheet Metal & Air Conditioning Contractors' National Association, Inc. If the General President of Sheet Metal Workers' International Association and the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the General President of Sheet Metal Workers' International Association and the national office of Sheet Metal and Air Conditioning Contractors' National Association, Inc. shall be promptly so notified without recommendation from the panel representatives. Should the President of Sheet Metal Workers' International Association or the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. fail or decline to appoint a panel member or should notice of failure of the panel representatives to resolve the dispute be given, the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said Board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible after the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said Board fails to reach a unanimous decision and the parties have received written notification of its failure.

(b) Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the Board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to present oral argument and to answer any questions raised by members of the Board. Any briefs filed by either party including copies of pertinent exhibits will also be exchanged between the parties in advance of the hearing.

(c) The National Joint Adjustment Board shall have the right to establish time limits which must be met with respect to each and every step or procedure contained in this section. In addition, the President of SMWIA and the Chairman of the National Labor Committee of SMACNA shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, telegram, or telephone notification.

(d) Unless a different date is agreed upon mutually between the parties or is directed by the unanimous decision of the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement.

ARTICLE XI

SECTION 1. Agreements, national in scope, between Sheet Metal Workers' International Association and other International Unions, covering work jurisdiction and the assignment, allocation and division of work among employees represented for the purposes of collective bargaining by such labor organizations, shall be respected and applied by the Employer, provided such Agreements have been consummated with the knowledge of and without objection from Sheet Metal and Air Conditioning Contractors' National Association, Inc.

ARTICLE XII

SECTION 1. All duly qualified apprentices shall be under the supervision and control of a Joint Apprentice Committee composed of six (6) members, three (3) of whom shall be selected by the Employer, and three (3) by the Union. Said Joint Apprentice Committee shall formulate and make operative such rules and regulations as they may deem necessary and which do not conflict with the specific terms of this Agreement, to govern eligibility, registration, education, transfer, wages, hours, working conditions of duly qualified apprentices and the operation of an adequate apprentice system to meet the needs and requirements of the trade. Said rules and regulations when formulated and adopted by the parties hereto shall be recognized as part of this Agreement.

SECTION 2. The Joint Apprentice Committee designated herein shall serve for the life of this Agreement, except that vacancies in said Joint Apprentice Committee caused by resignation or otherwise,

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may be filled by either party hereto, and it is hereby mutually agreed by both parties hereto, that they will individually and collectively cooperate to the extent that duly qualified apprentices be given every opportunity to secure proper technical and practical education experience in the trade, under the supervision of the Joint Apprentice Committee.

SECTION 3. It is hereby agreed that the Employer shall be entitled to apply to the Joint Apprentice Committee on the basis of one (1) apprentice for each four (4) journeymen regularly employed throughout the year, and said ratio shall govern the consideration and granting of apprentices by the Joint Apprentice Committee.

SECTION 4. All applicants for apprenticeship shall be between the ages of seventeen (17) and twenty-three (23) years of age and each apprentice shall serve an apprenticeship of four (4) years and such apprentices shall not be put in charge of work on any job and shall work under the supervision of a journeyman until apprenticeship terms have been completed and they have qualified as journeymen.

SECTION 5. A graduated wage scale for apprentices shall be established and maintained on the following percentage basis of the established wage rate of journeymen sheet metal workers:

First year —First half 45%—Second half 50%	Third year —First half 65%—Second half 70%
Second year—First half 55%—Second half 60%	Fourth year —First half 75%—Second half 80%

ARTICLE XIII

SECTION 1. This Agreement and Addenda Numbers I through XII attached hereto shall become effective on the 1st day of July, 19 75 and remain in full force and effect until the 30th day of June, 19 76, and shall continue in force from year to year thereafter unless written notice of reopening is given not less than ninety (90) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party.

SECTION 2. Notwithstanding any other provision of this Article, or any other Article of this Agreement, whenever an amendment to the Standard Form of Union Agreement shall be adopted by the National Joint Labor Relations Adjustment Committee, any party to this Agreement, upon the service of notice to all other parties hereto, shall have this Agreement reopened thirty (30) days thereafter, for the sole and only purpose of attempting to negotiate such amendment or amendments into this Agreement for the duration of the term hereof. There shall be no strike or lockout over this issue.

In witness whereof, the parties hereto affix their signatures and seal this _____ day of _____, 19 75.

(Specify Name of Association or Contractor)

Local Union No. 38
of Sheet Metal Workers' International Association

By _____
(Signature of Officer or Representative)

By _____
(Signature of Officer or Representative)
President & Business Manager

STANDARD FORM OF UNION AGREEMENT

24

SHEET METAL, ROOFING, VENTILATING AND AIR CONDITIONING CONTRACTING DIVISIONS OF THE CONSTRUCTION INDUSTRY

Agreement entered into this 1st day of July, 19 75

by and between Elmsford Sheet Metal Works, Inc.

(Name of Contractor or Contractor's Association)

hereinafter referred to as the Employer, and Local Union No. 38 of

Sheet Metal Workers' International Association, hereinafter referred to as the Union for Westchester,

Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York

(Specify area covered by this Agreement)

ARTICLE I

SECTION 1. This agreement covers the rates of pay, rules and working conditions of all employees of the employer engaged in but not limited to the (a) manufacture, fabrication, assembling, handling, erection, installation, disassembling, conditioning, adjustment, alteration, repairing and servicing of all ferrous or nonferrous metal work of U.S. #10 gauge or its equivalent or lighter gauge and all other materials used in lieu thereof and of all air-veyor systems and air handling systems regardless of material used including the setting of all equipment and all reinforcements in connection therewith; (b) all lagging over insulation and all duct lining; (c) testing and balancing of all air-handling equipment and duct work; (d) the repair of all shop and field sketches used in fabrication and erection, including those taken from original architectural and engineering drawings or sketches, and (e) all other work included in the jurisdictional claims of Sheet Metal Workers' International Association.

ARTICLE II

SECTION 1. No Employer shall subcontract or assign any of the work described herein which is to be performed at a job site to any contractor, subcontractor or other person or party who fails to agree in writing to comply with the conditions of employment contained herein including, without limitations, those relating to union security, rates of pay and working conditions, hiring and other matters covered hereby for the duration of the project.

SECTION 2. Subject to other applicable provisions of this Agreement, the Employer agrees that when subcontracting for prefabrication of materials covered herein, such prefabrication shall be subcontracted to fabricators who pay their employees engaged in such fabrication not less than the prevailing wage for comparable sheet metal fabrication, as established under provisions of this Agreement.

ARTICLE III

SECTION 1. The Employer agrees that none but journeyman and apprentice sheet metal workers shall be employed on any work described in Article I.

ARTICLE IV

SECTION 1. The Union agrees to furnish upon request by the Employer, duly qualified journeyman and apprentice sheet metal workers in sufficient numbers as may be necessary to properly execute work contracted for by the Employer in the manner and under the conditions specified in this Agreement.

ARTICLE V

SECTION 1. The Employer agrees to require membership in the Union, as a condition of continued employment of all employees performing any of the work specified in Article I of this Agreement, within eight (8) days following the beginning of such employment or the effective date of this Agreement, whichever is the later, provided the Employer has reasonable ground for believing that membership is available to such employees on the same terms and conditions generally applicable to other members and that membership is not denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fee uniformly required as a condition of acquiring or retaining membership.

SECTION 2. If during the term of this Agreement the Labor-Management Relations Act of 1947

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shall be amended by Congress in such manner as to reduce the time within which an employee may be required to acquire union membership, such reduced time limit shall become immediately effective instead of and without regard to the time limit specified in Section 1 of this Article.

SECTION 3. The provisions of this Article shall be deemed to be of no force and effect in any state, to the extent to which the making or enforcement of such provision is contrary to law. In any state where the making and enforcement of such provision is lawful only after compliance with certain conditions precedent, this Article shall be deemed to take effect as to involved employees immediately upon compliance with such conditions.

ARTICLE VI

SECTION 1. The regular working day shall consist of seven (7) hours labor in the shop or on the job between eight (8) a.m. and ~~for 5:30 p.m.~~ and the regular working week shall consist of five (5) consecutive seven (7) hour days labor in the shop or on the job, beginning with Monday and ending with Friday of each week. All full time or part time labor performed during such hours shall be recognized as regular working hours and paid for at the regular hourly rate. Except as otherwise provided pursuant to Section 4 of this Article, all work performed outside the regular working hours and performed during the regular work week, shall be at two (2) times the regular rate.

Employees shall be at the shop or project site at scheduled starting time each day and shall remain until quitting time.

SECTION 2. New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day Washington's Birthday, Presidential & Gubernatorial Election Days or days locally observed as such, and Saturday and Sunday shall be recognized as holidays. All work performed on holidays shall be paid as follows:

Double the hourly rate

SECTION 3. It is agreed that all work performed outside of regular working hours during the regular work week and on holidays shall be performed only upon notification by the Employer to the local union in advance of scheduling such work. Preference to overtime and holiday work shall be given to men on the job on a rotation basis so as to equalize such work as nearly as possible.

SECTION 4. Shift work and the pay and conditions therefor shall be only as provided in written addendum attached to this Agreement.

ARTICLE VII

SECTION 1. When employed in a shop or on a job within the limits of see attached addendum employees shall be governed by the regular working hours specified herein and shall provide for themselves necessary transportation within the said limits from home to shop or job at starting time and from shop or job to home at quitting time and the Employer shall provide, or pay, for all necessary additional transportation during working hours.

SECTION 2. When employed outside of the limits specified in Section 1 of this Article, and within the jurisdiction of the Union employees shall provide transportation for themselves which will assure their arrival at the limits specified in Section 1 of this Article at regular starting time, and the Employer shall provide or pay for all additional transportation for such jobs, including transportation from such job back to the limits specified in Section 1 of this Article which will assure arrival at such limits at quitting time. As an alternative to the foregoing method, travel expense may be paid by a zone or other method of payment. If this alternative method is used, it will be as provided in a written addendum attached hereto.

ARTICLE VIII

SECTION 1. The minimum rate of wages for journeymen sheet metal workers covered by this Agreement when employed in a shop or on a job within the jurisdiction of the Union to perform any work specified in Article I of this Agreement shall be \$see attached per hour, except as hereinafter specified in addenda Section 2 of this Article.

SECTION 2. On all work specified in Article I of this Agreement, fabricated and/or assembled by journeymen sheet metal workers and/or apprentices within the jurisdiction of this Union, or elsewhere, for erection and/or installation within the jurisdiction of any other Local Union affiliated with Sheet Metal Workers' International Association, whose established wage scale is higher than the wage scale specified in this Agreement, the higher wage scale of the job site Union shall be paid to the journeymen employed on such work in the home shop or sent to the job site.

SECTION 3. The provisions of Section 2 of this Article, Section 2 of Article II and Section 1 of Article

shall not be applicable to the manufacture for sale to the trade or purchase of the following items:

- | | |
|--|--------------------------------------|
| 1. Ventilators | 6. Mixing (attenuation) boxes |
| 2. Louvers | 7. Plastic skylights |
| 3. Automatic and fire dampers | 8. Air diffusers, grilles, registers |
| 4. Radiator and air conditioning unit enclosures | 9. Sound attenuators |
| 5. Fabricated pipe and fittings for residential installations only | 10. Chutes |

SECTION 4. The provisions of Section 2 of this Article shall not be applicable to the manufacture for sale to the trade or purchase of PLENUMS—Double wall panels for use in construction of air housing, nor to AIR POLLUTION CONTROL SYSTEMS fabricated for the purpose of removing air pollutants, excluding air conditioning, heating and ventilating systems.

SECTION 5. Except as provided in Sections 2 and 6 of this Article, the Employer agrees that journeymen sheet metal workers hired outside of the territorial jurisdiction of this Agreement shall receive the wage scale and working conditions of the local Agreement covering the territory in which such work is performed or supervised.

SECTION 6. When the Employer has any work specified in Article I of this Agreement to be performed outside of the area covered by this Agreement and within the area covered by another Agreement with another union affiliated with the Sheet Metal Workers' International Association, and qualified sheet metal workers are available in such area, he may send no more than two (2) sheet metal workers per job into such area to perform any work which the Employer deems necessary, both of whom shall be from the Employer's home jurisdiction. All additional sheet metal workers shall come from the area in which the work is to be performed. Journeymen sheet metal workers covered by this Agreement who are sent outside the area covered by this Agreement shall be paid at least the established minimum wage scale specified in Section 1 of this Article but in no case less than the established wage scale of the local Agreement covering the territory in which such work is performed or supervised, plus all necessary transportation, travel time, board and expenses while employed in that area, and the Employer shall be otherwise governed by the established working conditions of that local Agreement. If employees are sent into an area where there is no local Agreement of the Sheet Metal Workers' International Association covering the area then the minimum conditions of the home local union shall apply.

SECTION 7. In applying the provisions of Sections 2, 5, and 6 of this Article VIII, the term "wage scale" shall include the value of all applicable hourly contractual benefits in addition to the hourly wage rate provided in said Sections.

SECTION 8. Welfare benefit contributions shall not be duplicated.

SECTION 9. Wages at the established rates specified herein shall be paid before 3:30 P.M. _____ in the shop or on the job at or before quitting time on Friday of each week, and no more than two (2) days' pay will be withheld. However, employees when discharged, shall be paid in full.

SECTION 10. Journeymen sheet metal workers who report for work by direction of the Employer and are not placed at work, shall be entitled to two (2) hours' pay at the established rate. This provision, however, shall not apply under conditions over which the Employer has no control.

SECTION 11. Each Employer covered by this Agreement shall employ at least one (1) journeyman sheet metal worker who is not a member of the firm on all work specified in Article I of this Agreement.

SECTION 12(a). Contributions provided for in Section 12(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the sheet metal industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support, and improve the employment opportunities for employees. No part of any such payments, however, shall be used for political activities or to oppose officially stated policy, or officially endorsed programs, or to interfere in any way in the internal affairs of the Sheet Metal Workers' International Association or of any affiliated local union.

(b). The employer shall pay the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States (IFUS) two cents (\$0.02) per hour for each hour worked on and after the effective date of this agreement by all employees of the employer covered by this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted to IFUS, 1611 North Kent Street, Arlington, Virginia, 22209, or for the purpose of transmittal, through SUREA of SBNY, Inc. (Name of local remitting organization)

(c). The IFUS shall submit to the Sheet Metal Workers' International Association not less often than semi-annually written reports describing accurately and in reasonable detail, the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. At least one time per year, shall include in such written report a financial statement attested by a certified public accountant

maintaining its balance sheet and detailed statement of annual receipts and disbursements. Further specific detailed information in regard to IFUS activities or its receipts and/or expenditures shall be furnished to the Sheet Metal Workers' International Association upon written request.

(d). Grievances concerning use of IFUS funds for purposes prohibited under Section 12(a) or for violations of other subsections of this Section may be processed by the Sheet Metal Workers' International Association directly to the National Joint Adjustment Board under the provisions of Article X of this Agreement. In the event such proceeding results in a deadlock, either party may, upon ten (10) days notice to the other party, submit the issue to final and binding arbitration. The Arbitrator shall be selected by the Co-Chairmen of the National Joint Adjustment Board. The Arbitrator shall be authorized to impose any remedial order he deems appropriate for violation of this Section, including termination of the employer's obligation to contribute to the IFUS. The authority of the Arbitrator is expressly limited to a determination of a deadlocked issue under this Section, (Section 12, Article VIII), and no other.

SECTION 13(a). Contributions provided for in Section 13(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the Sheet Metal Industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support, and improve the employment opportunities for employees. No part of any such payments, however, shall be used for political activities or to oppose officially stated policy or officially endorsed programs or to interfere in any way in the internal affairs of the Sheet Metal Workers' International Association or of any affiliated local union.

(b). The Employer shall pay to the Sheet Metal Industry Fund of Westchester & Vicinity
(Name and address of local industry fund)
(hereinafter referred to as the local industry fund), 1.50 cents (\$0.____) per hour for each hour worked on or after the effective date of this Agreement by all employees of the employer covered by this Agreement. Payment shall be made monthly on or before the 20th day of the succeeding month.

(c). The fund shall furnish to the Business Manager of the Union not less often than quarter-annually written reports describing in reasonable detail the nature of activities in which it is engaged or which it supports directly or indirectly with any of its funds. At least one time per year, the Fund shall include in such written report, a statement attested by a certified public accountant and containing its balance sheet and detailed statement of receipts and disbursements. Further specific detailed information in regard to Fund activities or its receipts and/or disbursements shall be furnished to the Business Manager of the Union upon his written request.

(d). Grievances concerning use of local industry fund monies to which an employer shall contribute for purpose prohibited under Section 13(a) or for violations of other subsections of this Section shall be handled under the provision of Article X of this Agreement. The National Joint Adjustment Board shall be authorized to impose any remedial order for violation of this Section, including termination of the employer's obligation to contribute to the local industry fund.

SECTION 14. The employers will contribute to the National Training Fund for the Sheet Metal and Air Conditioning Industry two cents (\$0.02) per hour for each hour worked on and after the effective date of this agreement by all employees of the employer covered by this agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted to the office of the National Training Fund as designated by the Trustees of the Fund, or for purposes of collection and transmittal through

SMWIA L.U. 38

(Name of local transmittal office)

The parties agree to be bound by the Agreement and Declaration of Trust establishing said Fund and amendments thereto as may be made from time to time and hereby designate as their representatives on the Board of Trustees such Trustees as are named, together with any successors who may be appointed pursuant to said agreement.

ARTICLE IX

SECTION 1. Journeyman and apprentice sheet metal workers covered by this Agreement shall provide for themselves all necessary hand tools.

SECTION 2. Journeyman and apprentice sheet metal workers covered by this Agreement shall not be permitted or required as a condition of employment to furnish the use of automobile or other conveyance to transport men, tools, equipment or materials from shop to job, from job to job, or from job to shop; facilities for such transportation to be provided by the Employer. This provision shall not restrict the use of an automobile or other conveyance to transport its owner and personal tools from home to shop or job at starting time or from job to home at quitting time.

ARTICLE X

SECTION 1. Grievances of the Employer or the Union, arising out of interpretation or enforcement of this Agreement shall be settled between the Employer directly involved and the duly authorized repre-

se...ive of the Union, if possible. An Employer may have the local Association present to act as his representative.

SECTION 2. Grievances not settled as provided in Section 1 of this Article may be appealed by either party to the Local Joint Adjustment Board having jurisdiction over the parties and such Board shall meet promptly on a date mutually agreeable to the members of the Board, but in no case more than fourteen (14) calendar days following the request for its services, unless the time is extended by mutual agreement of the parties, to render a final and binding determination, except as provided in Sections 3 and 5 of this Article. The Board shall consist of an equal number of representatives of the Union and of the local Employers' Association and both sides shall cast an equal number of votes at each meeting. The local Employers' Association, on its own initiative, may submit grievances for determination by the Board as provided in this Section.

Notice of appeal to the Local Joint Adjustment Board shall be given within thirty (30) days after termination of the procedures prescribed in Section 1 of this Article, unless the time is extended by a mutual agreement of the parties.

SECTION 3. Grievances not disposed of under the procedure prescribed in Section 2 of this Article, because of a deadlock, or failure of such Board to act, may be appealed jointly or by either party to a Panel consisting of one (1) representative appointed by the General President of Sheet Metal Workers' International Association and one (1) representative appointed by the Chairman of the Labor Relations Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. Appeals on behalf of employees shall be mailed to the General Secretary-Treasurer of the Sheet Metal Workers' International Association and those on behalf of an employer mailed to the Secretary of the Labor Committee of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Joint appeals shall be mailed to the Secretaries of both Associations. Notice of appeal to the Panel shall be given within thirty (30) days after termination of the procedures prescribed in Section 2 of this Article. Such Panel shall meet promptly, but in no event more than fourteen (14) calendar days following receipt of such appeal, unless such time is extended by mutual agreement of the Panel members. Except in case of deadlock, the decision of the Panel shall be final and binding.

Notwithstanding the provisions of Paragraph 1 of this Section, a contractor who was not a party to the labor agreement of the area in which the work in dispute is performed may appeal the decision of the Local Joint Adjustment Board, including a unanimous decision, and request a Panel hearing as set forth in Section 3 of this Article, providing such appeal is approved by both the Chairman of the Labor Relations Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. and by the General President of Sheet Metal Workers' International Association.

SECTION 4. Grievances not settled as provided in Section 3 of this Article may be appealed jointly or by either party to the National Joint Adjustment Board, as established by the Sheet Metal Workers' International Association and the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Submission shall be made and decisions rendered under such procedures as may be prescribed by such Board, from time to time, and mutually approved by the parties creating it. Copies of the procedures shall be available from, and submissions of grievances may be made to, either the General Secretary-Treasurer of Sheet Metal Workers' International Association or the Secretary of the Labor Committee of the Sheet Metal and Air Conditioning Contractors' National Association, Inc. Submissions on appeal to the National Joint Adjustment Board shall be made within thirty (30) days after termination of the procedures prescribed in Section 3 of this Article.

SECTION 5. A Local Joint Adjustment Board, Panel and the National Joint Adjustment Board are empowered to render such decisions and grant such relief to either party as they deem necessary and proper, including awards of damages or other compensation and, if it is believed warranted, to direct that the involved agreement and any other agreement or agreements between the employer and any other local union affiliated with the Sheet Metal Workers' International Association be cancelled, provided that any decision of a Local Joint Adjustment Board directing cancellation of an agreement or agreements may be appealed by the affected employer or local union as a matter of right, directly to the National Joint Adjustment Board.

SECTION 6. In the event any party fails or refuses to comply with any decision of a Local Joint Adjustment Board or Panel, without appeal, or any decision of the National Joint Adjustment Board, within thirty (30) days after notice thereof, a Local Joint Adjustment Board, Panel, or any party to the dispute may, in addition to any other legal remedies which may be available to the parties, request the National Joint Adjustment Board to cancel the involved agreement and any other agreements between the involved employer and other local unions affiliated with Sheet Metal Workers' International Association. Unless otherwise decided by unanimous vote, the National Joint Adjustment Board shall cancel such agreements if it finds the involved party to be in non-compliance with the decision in question. Requests for the Board's services shall be made in the same manner and in the same form as other appeals to the National Joint Adjustment Board and the procedure followed shall be the same except that any intermediate step or steps shall be omitted and the request made directly to the National Joint Adjustment Board.

Failure to exercise the right of appeal at any step thereof within the time limit provided

There shall be no cessation of work by strike or lockout during the pendency of the procedures provided for in this Article. Except in case of deadlock, the decision of the National Joint Adjustment Board shall be final and binding.

SECTION 8. In addition to the settlement of grievances arising out of interpretation or enforcement of this agreement as set forth in the preceding sections of this Article, any controversy or dispute arising out of the failure of the parties to negotiate a renewal of this agreement shall be settled as hereinafter provided:

(a) Should the negotiations for renewal of this agreement become deadlocked in the opinion of the Local Union or of the Local Contractors' Association, or both, notice to that effect shall be given to the office of the General President of Sheet Metal Workers' International Association and the national office of the Sheet Metal & Air Conditioning Contractors' National Association, Inc. If the General President of Sheet Metal Workers' International Association and the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the General President of Sheet Metal Workers' International Association and the national office of Sheet Metal and Air Conditioning Contractors' National Association, Inc. shall be promptly so notified without recommendation from the panel representatives. Should the President of Sheet Metal Workers' International Association or the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. fail or decline to appoint a panel member or should notice of failure of the panel representatives to resolve the dispute be given, the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said Board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible after the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said Board fails to reach a unanimous decision and the parties have received written notification of its failure.

(b) Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the Board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to present oral argument and to answer any questions raised by members of the Board. Any briefs filed by either party including copies of pertinent exhibits will also be exchanged between the parties in advance of the hearing.

(c) The National Joint Adjustment Board shall have the right to establish time limits which must be met with respect to each and every step or procedure contained in this section. In addition, the President of SMWIA and the Chairman of the National Labor Committee of SMACNA shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, telegram, or telephone notification.

(d) Unless a different date is agreed upon mutually between the parties or is directed by the unanimous decision of the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement.

ARTICLE XI

SECTION 1. Agreements, national in scope, between Sheet Metal Workers' International Association and other International Unions, covering work jurisdiction and the assignment, allocation and division of work among employers represented for the purposes of collective bargaining by such labor organizations, shall be respected and applied by the Employer, provided such Agreements have been consummated with the knowledge of and without objection from Sheet Metal and Air Conditioning Contractors' National Association, Inc.

ARTICLE XII

SECTION 1. All duly qualified apprentices shall be under the supervision and control of a Joint Apprentice Committee composed of six (6) members, three (3) of whom shall be selected by the Employer, and three (3) by the Union. Said Joint Apprentice Committee shall formulate and make operative such rules and regulations as they may deem necessary and which do not conflict with the specific terms of this Agreement, to govern eligibility, registration, education, transfer, wages, hours, working conditions of duly qualified apprentices and the operation of an adequate apprentice system to meet the needs and requirements of the trade. Said rules and regulations when formulated and adopted by the parties hereto shall be recognized as part of this Agreement.

SECTION 2. The Joint Apprentice Committee designated herein shall serve for the life of this Agreement, and its term shall be extended by the parties in the event of resignation or otherwise.

ma filled by either party hereto, and it is hereby mutually agreed by both parties hereto, that they will individually and collectively cooperate to the extent that duly qualified apprentices be given every opportunity to secure proper technical and practical education experience in the trade, under the supervision of the Joint Apprentice Committee

SECTION 3. It is hereby agreed that the Employer shall be entitled to apply to the Joint Apprentice Committee on the basis of one (1) apprentice for each four (4) journeymen regularly employed throughout the year, and said ratio shall govern the consideration and granting of apprentices by the Joint Apprentice Committee.

SECTION 4. All applicants for apprenticeship shall be between the ages of seventeen (17) and twenty-three (23) years of age and each apprentice shall serve an apprenticeship of four (4) years and such apprentices shall not be put in charge of work on any job and shall work under the supervision of a journeyman until apprenticeship terms have been completed and they have qualified as journeymen.

SECTION 5. A graduated wage scale for apprentices shall be established and maintained on the following percentage basis of the established wage rate of journeymen sheet metal workers:

First year	—First half 45%—Second half 50%	Third year	—First half 65%—Second half 70%
Second year	—First half 55%—Second half 60%	Fourth year	—First half 75%—Second half 80%

ARTICLE XIII

SECTION 1. This Agreement and Addenda Numbers I through XII attached hereto shall become effective on the 1st day of July, 1976, and remain in full force and effect until the 30th day of June, 1976, and shall continue in force from year to year thereafter unless written notice of reopening is given not less than ninety (90) days prior to the expiration date. In the event such notice of reopening is served, this Agreement shall continue in force and effect until conferences relating thereto have been terminated by either party.

SECTION 2. Notwithstanding any other provision of this Article, or any other Article of this Agreement, whenever an amendment to the Standard Form of Union Agreement shall be adopted by the National Joint Labor Relations Adjustment Committee, any party to this Agreement, upon the service of notice to all other parties hereto, shall have this Agreement reopened thirty (30) days thereafter, for the sole and only purpose of attempting to negotiate such amendment or amendments into this Agreement for the duration of the term hereof. There shall be no strike or lockout over this issue.

In witness whereof, the parties hereto affix their signatures and seal this 1st day of Sept 1976.

Elmsford Sheet Metal Works, Inc.

(Specify Name of Association or Contributor)

Local Union No. 38

of Sheet Metal Workers' International Association

By

(Signature of Officer or Representative)

By

(Signature of Officer or Representative)

President & Business Manager

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ADDENDA TO STANDARD FORM OF UNION AGREEMENT

PREFACE

It is understood and agreed that nothing illegal in this addenda to the STANDARD FORM OF UNION AGREEMENT shall be binding on either party. Inasmuch as this AGREEMENT is subject to any and all governmental laws, rules and regulations, any provisions of this AGREEMENT adjudged to be unlawful in a court of competent jurisdiction, shall be treated for all purposes as null and void, but all other provisions of this agreement shall continue in full force and effect as provided herein.

WITNESSTH

WHEREAS, the UNION and EMPLOYER are signatory to a COLLECTIVE BARGAINING AGREEMENT, dated July 1, 1975, (hereinafter referred to as the "AGREEMENT"), covering all of the journeymen and apprentice sheet metal workers employed by the EMPLOYER, (hereinafter referred to as the "EMPLOYEES") for the period retroactive July 1, 1975 to June 30, 1976 and

WHEREAS, the AGREEMENT terminates on June 30, 1976; and

WHEREAS, the UNION and EMPLOYER have negotiated and agreed upon new terms, conditions and provisions of employment for the EMPLOYEES, including certain amendments and modifications of the AGREEMENT, to be confirmed in writing for the period July 1, 1975 to June 30, 1976;

NOW, THEREFORE, the UNION and EMPLOYER mutually agree as follows:

1. THE AGREEMENT, as herein modified, amended and supplemented shall continue in full force and effect, and shall constitute the COLLECTIVE BARGAINING AGREEMENT between the UNION and the EMPLOYER, (hereinafter referred to collectively as the COLLECTIVE BARGAINING AGREEMENT) covering the EMPLOYEES for the period of July 1, 1975 to June 30, 1976. Except as otherwise expressly provided herein, all of the modifications, amendments and supplements of the AGREEMENT shall be effective as of July 1, 1975.

ADDENDA TO ARTICLE I

1. In the operation of fans and blowers in buildings under construction, prior to the completion of the work and acceptance by the owner, both parties agree that a journeyman sheet metal worker shall be employed by the sheet metal contractor to attend any fan or blower that may be placed in operation, except when the H.V.A.C. Sheet Metal Contractor has men employed on the job site between the hours of 8:00 A.M. and 3:30 P.M.. The second shift will consist of an 8 hour day from 3:30 P.M. to 11:45 P.M.. The third shift will consist of an 8 hour day between the hours of 11:45 P.M. and 8:00 A.M..

2. The parties further agree that if a sufficient number of fans or blowers are being operated in addition to the initial requirements, which

operation will call for additional fan attendants for a period of not less than eight (8) hours per day, then the additional staff required shall consist of journeymen sheet metal workers and the pay they receive for such services shall be the single time rate for each full shift of eight (8) hours; no rules of double time to apply. Where the operation consists of less than eight (8) hours, outside of the regular working hours, then double time shall be paid.

3. Spiral pipe or conduit - spiral pipe and high pressure fittings or conduit may only be used on a high velocity system. The use of spiral pipe or conduit shall not be permitted on low pressure conventional systems except under slab.

4. The maximum length of flexible hose shall not be more than six (6) feet from point to point in any one branch line.

5. The employer shall exert every possible effort to secure all work included in the jurisdiction of the sheet metal workers and this agreement. If an employer accepts any job, by contract or otherwise, all of the work included in the jurisdiction of sheet metal workers and this agreement and considered as normally part of the job involved is not included therein, employees covered by this agreement and the union shall be free to refuse to perform any work on or for such job and should they refuse, they shall not be in violation of this agreement. It is specifically understood that in order to carry out the intent of this paragraph and of Article VIII - Section III (sub-contracting and fabrication), the Business Manager or his duly authorized representative, shall have the right to demand evidence, in the way of purchase orders, invoices, and/or checks, from any contractor to prove compliance with this and related paragraphs of this agreement. It is further understood and agreed that the Business Manager of Local Union #38, or his duly authorized representative, shall have immediate access to any shop where employees covered by this agreement are employed.

6. The fabrication and erection of duct systems of fiber glass, plastic, or any other materials are also to be construed as coming within the scope of Article I, Section 1 of the Standard Form of Union Agreement.

7. It shall be mandatory for employers to send in job report forms as soon as they sign a contract to perform work.

ADDENDA TO ARTICLE II

1. The Employer agrees not to sub-contract, sublet, delegate or assign to any firm, individual or corporation outside the jurisdiction of the party of the first part, any work normally handled by members of shops in contractual relation with Sheet Metal Workers' Local Union #38, except with the written consent of the Local Union or duly constituted Adjustment Board. The employer further agrees that only certified sketchers as approved by the Local Union shall be engaged to prepare all shop and field sketches used in fabrication and erection, including those taken from the original architectural and engineering drawings or sketches.

2. It is mutually agreed by and between the parties signatory hereto to permit the use of explosive tools that are in accordance with all State, Federal, O.S.H.A. and industry safety requirements.

3. Local Union #38 and the Sheet Metal and Roofers Employers Association of Southeastern New York, Inc. will continue to implement an Affirmative Action Program.

ADDENDUM TO ARTICLE VI

Section A

1. There shall be a Local Union No. 38 Steward on all locations where Sheet Metal Workers are engaged. When three (3) or more journeymen Sheet Metal Workers are employed on a location, the Steward may not be transferred without notice to the Business Agent. The Steward shall be on the job during all working hours where there are four (4) or more Sheet Metal Workers employed.

Section B

1. Steward - Local Union No. 38 Business Representative must be notified 72 hours in advance of laying off a duly appointed Steward, whose Employer, or Agent of Employer, has been notified of his appointment as a Steward. In the event the Union disagrees with the right of the Employer to lay off the Steward, a Joint Adjustment Board Meeting is to be called within 72 hours, at a place to be mutually agreed upon. If either party fails to meet, the offending party shall be liable for one day's pay to the employee for each working day lost and another meeting shall be scheduled within 24 hours, with the above mentioned penalty to be imposed upon the party that does not show for the meeting. This procedure to be followed until meeting is held. It is further agreed that the Steward shall be the third from the last man on the job. It is further agreed that in the event of a temporary shut down if the Steward is not the third man rehired on the job, the Local Union shall have recourse to a grievance hearing under Article 10 - Standard Form of Union Agreement.

2. The Steward shall be notified by the Employer when overtime work is necessary and given the names of Journeymen and Apprentices working overtime. In the event no Steward is assigned to Company, the employer must post overtime permit.

Section C

1. There shall be a Local Union #38 foreman in every shop and every location where four (4) or more men are employed, in the following ratios:

Up to four (4) men	One (1) foreman
Upon employment of 12th man	Two (2) foreman
Upon employment of 20th man	General foreman plus two (2) foreman
Upon employment of 28th man	General foreman plus three (3) foreman

and to be continued on the basis of one (1) additional foreman upon the employment of each eighth (8th) man thereafter. On a job employing twelve (12) or more men the first foreman shall be the foreman through whom orders

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are to be issued to the other foreman. All foreman must be journeyman sheet metal workers.

2. Foreman shall receive a minimum of 10% per hour over the highest prevailing scale paid sheet metal workers on the job or in the shop.

(a) Each foreman shall have the supervision and responsibility of up to eight (8) Journeyman in crew designated to him by the General Foreman.

(b) General Foreman: There shall be a general foreman appointed upon the employment of the 20th sheet metal worker on the job. The General Foreman is to receive a minimum of 10% above the rate of the Regular Foreman.

(c) The General Foreman shall perform in a supervisory capacity and shall supercede all Regular Foreman.

3. When a man reports to work at his employers direction and is not put to work he shall be paid the following hourly wages:

(a) Show up at 8:00 A. M. and unable to start - 2 hours pay

(b) Inability to continue work after 10:00 A. M. - 4 hours pay

(c) Inability to continue after 12:00 noon - 7 hours pay

When an employee, covered by this agreement, is to be laid off, he shall be notified not later than 12:00 noon of the day that the Employer intends to lay him off, and the Employer shall grant the employee the use of the Employer's telephone to call the Union's office. If the Employer fails to so notify the employee, the employee shall be compensated with a day's pay at the current rate of pay.

ADDENDUM TO ARTICLE VI

Section E

1. SHIFT WORK

Both parties to this AGREEMENT recognize that due to the special nature of certain jobs in the jurisdiction of Local #38, work may need to be performed after regular hours on a shift basis. Shift work may be performed in the field only in an existing completed building in which the regular activity of the occupying business is being carried out and in the shop. All shifts must be on a seven (7) hour basis.

When shift work is performed it must continue for not less than five (5) consecutive work days. Once an established time is set on jobs with the business office of Local Union #38, this time must continue for at least five (5) consecutive days from the time this shift was established. If this established time does not continue for at least five (5) consecutive days, then all of this time shall be at a double rate of pay. The 1st shift will be between the hours of 8:00 A. M. and 3:30 P.M. The 2nd shift will be between the hours of 4:00 P.M. and 11:30 P.M. The 3rd shift will be between the hours of 12:00 A. M. and 7:30 A. M.

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The rate of pay for the 2nd shift shall be 15% above the prevailing wage rate. The rate of pay for the 3rd shift shall be 25% above the prevailing wage rate. All shift work performed on Holidays, Saturdays and Sundays shall be at double the shift rate prevailing. When the contractor plans shift work, the Local Union Business Office must be notified seventy-two (72) hours before shift work starts--and must confirm same in writing. When the Local Union is notified that shift work is contemplated on any particular job, the Local Union shall notify the Owner and/or Contractor that the shift work rate of pay is in effect on that particular job.

ADDENDA TO ARTICLE VII

1. When sent from the office or shop of the Union to job within the limits of Local Union No. 38 territory, the Travel Zone rates shall be as follows:

1. Travel Zones:

0 to 5.9 miles	-	\$ 2.00
6 to 11.9 miles	-	\$ 3.00
12 to 17.9 miles	-	\$ 4.00
18 to 23.9 miles	-	\$ 5.00
24 to 29.9 miles	-	\$ 6.00
30 to 35.9 miles	-	\$ 7.00
36 to 41.9 miles	-	\$ 8.00
42 to 47.9 miles	-	\$ 9.00
48 to 53.9 miles	-	\$10.00
54 to 59.9 miles	-	\$11.00

60 miles and over shall constitute a board job and as such will be paid \$12.00 a day on a 7 day basis - \$84.00 per week plus \$15.00 expenses 1st day and last day of board job.

2. The Employer shall provide all additional transportation during regular working hours when traveling from shop to job or job to job.

3. A new Addendum clause entitled "Reimbursement of Bridge Tolls" shall be added, which shall be worded as follows:

"The employer shall reimburse any employee for bridge tolls incurred when driving his own vehicle from home to job, shop to job, and job to home upon presentation of an official receipt for payment of same, but an employee using his own vehicle for such purposes shall not be required to provide transportation to other employees".

The parties shall have the right to appeal to the NJAB during the term of the agreement for reversion to the prior bridge toll arrangement if either side feels the new clause is being abused.

4. When sent from the shop of the employer to a job within 5.9 road miles of Local Union No. 38 territory, no travel zones shall apply.

Above 5.9 miles, travel zone per Addendum to Article VII, Section 1, shall apply.

ADDENDUM TO ARTICLE VIII**PAYMENT OF WAGES BY CHECK**

An employer desiring to pay wages by check must first conform to the following:

1. Request must be made to the Local Union in writing.
2. Employer must have written approval of New York State Labor Department to pay by check.
3. Bond must be posted in sufficient amount to cover a normal payroll:

For Employers of two (2) employees or less - \$ 1,600.00
 For Employers of three(3) to ten (10) employees - \$ 8,000.00
 For Employers of eleven(11) to twenty (20) employees - \$ 16,000
 For Employers of twenty one (21) to thirty(30) employees - \$ 24,000
 For Employers of thirty one (31) to forty (40) employees - \$ 32,000
 Multiple of eight thousand dollars (\$ 8,000.00)for each additional ten (10) employees.

4. Payment by check is not to be made until written permission is received by the Sheet Metal Contractor and signed by the Local Union Business Manager.

An Employer approved to pay by check will have the work week end on Tuesday and pay check must be given to the Sheet Metal Journeyman or Apprentice on Thursday of the same week at or before quitting time.

Penalty - if check issued by Employer cannot be cashed - the employer will be liable for one day's pay for each day the employee waits for the cash-after the employee notifies Local Union No. 38 Business Office.

When paying by check on the job site, the Employer must establish credit in the nearest bank to the job site, in order that the check can be readily cashed by the employee.

Section 1. The minimum rate of wages for journeymen sheet metal workers covered by this Agreement when employed in a shop or on a job within the jurisdiction of the Union to perform any work specified in Article I of this Agreement shall be as set forth below, except as hereinafter specified in Section 2 of this Article:

Effective -

July 1, 1975 to December 31, 1975 - hourly wage \$10.00 per hour
 January 1, 1976 to June 30, 1976 - Pending

It is expressly understood and agreed, that the employer shall obtain New York State Disability benefits for each covered employee.

Premiums allowable under New York State law for same may be deducted from employees wage.

ADDENDUM TO ARTICLE IX

1. It shall be mandatory for the employer to furnish protective equipment such as but not limited to, gautlets, gloves, goggles for welding and burning as well as foul weather gear such as weatherproof rain coat, hat, boots and gloves when employees are required to work in inclement weather.

2. The employer shall provide suitable heated shanty on all job sites where ten (10) or more men are employed for twenty (20) or more days.

3. "All safety conditions shall be observed when hoisting by chain hoist, duct lifts, well wheels, come-alongs, etc. The maximum length of duct work to be lifted or hoisted shall be no more than 16' - 0" per hoist or lift."

4. All Employers shall have the name of the corporation or company clearly and legibly painted or stencilled on all of their vehicles bearing commercial license plates.

5. The Employer shall reimburse all employees against loss of tools and clothing on the job site due to robbery when locked in a gang box or secured in a room where forced entry can be proven or loss through fire and explosion.

ADDENDUM TO ARTICLE XII

It is hereby agreed between the Sheet Metal and Roofers Employers Association of Southeastern New York, Inc., and Sheet Metal Workers International Association Local Union 38, that the Local Union #38 Apprentices shall attend school one Saturday a month and shall receive the rate of regular time for this six (6) hour day. This shall be paid by their employer.

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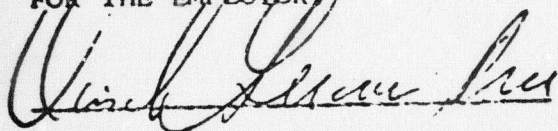
NATIONAL STABILIZATION AGREEMENT OF THE
SHEET METAL INDUSTRY APPROVED STAND COLLECTIVE
BARGAINING CLAUSE

The undersigned Employer and Local Union agree as follows:

Beginning on April 1, 1974, the Employer shall make monthly payments of an amount equal to three per cent (3%) of the gross earnings of each Employee subject to this Agreement to the National Stabilization Agreement of the Sheet Metal Industry (SASMI) Trust Fund. Gross Earnings, for purpose of this Agreement, shall mean (a) total wages paid to an Employee by the Employer which are reportable by the Employee for Federal Income Tax purposes, and (b) any and all contributions paid by such Employer on behalf of the Employee to a pension and/or health and welfare fund.

Employer agrees to adopt the National SASMI Trust as presently constituted and as the same may be amended from time to time, to be bound by all Rules and Regulations of the Plan as adopted by the Trustees, as presently existing and as the same may be amended from time to time, and to sign the Standard Participation Agreement prescribed by the Trustees as a condition of becoming a party to and participant in such Trust.

FOR THE EMPLOYER:



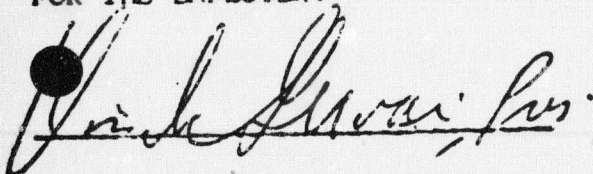
FOR THE LOCAL UNION:


President & Business Manager

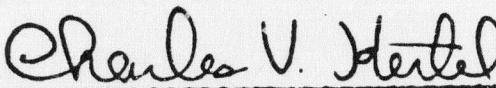
The following provision, for check-off of union dues shall be added as an unnumbered Article of the Addenda:

The parties hereto agree that each Employer, subject to receipt of a properly executed form of authorization from his Employees, shall withhold 1% of each Employee's gross wages exclusive of Vacation, Welfare, Pension, Annuity, Industry or SASMI Funds, and shall remit such amount to Local Union #38 in behalf of the Employee on account of such Employee's Union dues. The Employer shall make such remittance, accompanied by a listing of Employees and amounts withheld. An employer shall be considered delinquent when such remittances are not timely made as hereinbefore provided, and the Union shall then have the right to remove all covered Employees without prior notification to the Employer; such removal shall not be deemed a violation of this Agreement.

FOR THE EMPLOYER:



FOR THE LOCAL UNION:


President & Business Manager

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ADDENDA TO ALL FUNDS

1. All Employers shall post a Bond guaranteeing payment of the Welfare, Pension, Vacation, Industry and Annuity Funds obligations, or any other Funds that may hereinafter be established as follows:

For Employers of two (2) employees or less - \$1,600.00
For Employers of three (3) to ten (10) employees - \$8,000.00
For Employers of eleven (11) to twenty (20) employees - \$16,000
For Employers of twenty one (21) to thirty (30) employees - \$24,000
For Employers of thirty one (31) to forty (40) employees - \$32,000
Multiple of eight thousand dollars (\$8,000.00) for each additional ten employees.

Bond must contain "notice of cancellation" clause and notification to the Local Union must be made by the Bonding Company of the cancellation.

There shall be a trustee representing the independent contractors on all funds; said trustee to be selected by the independent contractors (Addenda to all funds).

2. An Employer shall be considered delinquent in his contributions to ALL FUNDS whenever payments are not made by the 30th day after the month for which the contributions were due and owing. When an Employer becomes delinquent, the Union shall have the right to remove all covered employees without prior notification to the Employer. Such removal shall not be deemed a violation of this Agreement.

"In the event a delinquency is turned over to an attorney for collection, the employer shall be required to pay for the cost of collection and attorney's fees."

3. The Employer shall make available to the Trustees of the Welfare, Pension and Vacation Funds any and all records pertaining to the covered employees which the said Funds may require in connection with their sound and efficient operation.

Contribution to All Funds shall be as follows:

WELFARE FUND

July 1, 1975 to December 31, 1975.....7.3% of gross wages

PENSION FUND

July 1, 1975 to December 31, 1975.....7% of gross wages

VACATION PLAN

July 1, 1975 to December 31, 1975.....9% of gross wages

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INDUSTRY FUND

The Employer and the Union agree that the Industry Fund shall be continued and that the contributions thereto shall be made to the established fund as follows:

Effective July 1, 1975 to December 31, 1975 - 1 $\frac{1}{2}$ % of hourly wages.

Submission of periodic reports of the Income and Expenditures of the Industry Fund shall be made by the Fund of the Sheet Metal Workers Local Union 38.

Subject to the conditions prescribed in Article VIII, Section 13, of the Standard Form of Union Agreement (1975 version), the present contribution to the Industry Fund of 1 $\frac{1}{2}$ % of hourly wage rates shall be continued in effect, out of which eight cents (.08) per hour shall be allocated and transmitted monthly to the local apprentice training program. No other change in the economic operations of the local apprentice training program shall be made.

UNION DUES CHECK-OFF

Effective July 1, 1975 to December 31, 1975

The Employer and the Union agree that an Union Dues Check-Off shall be 1% per hour payable by the Employer and reported on the Contributions Report.

ANNUITY FUND

Effective July 1, 1975 to December 31, 1975

The Employer and the Union agree that an Annuity Fund shall be 7% of gross wages payable by the Employer and reported on the Contributions Report.

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COLLECTIVE BARGAINING CLAUSE-FOR WELFARE PLAN

Commencing with the payroll following the date hereto, the employers agree to pay (See Addenda (d) attached) of their gross payroll for all employees covered by this agreement to the Sheet Metal Workers (of Local Union No. 38) Insurance & Welfare Fund (hereinafter referred as the "Welfare Fund".) The contributions of the employees shall be used exclusively to provide group insurance and other related welfare benefits to eligible employees and their families in such form and amount as the Trustees of the Welfare Fund may determine.

The said Welfare Fund shall be administered pursuant to an Agreement and Declaration of Trust administered jointly by an equal number of representatives of the Employers and of the Union. A copy of this Agreement and Declaration of Trust, together with any amendments thereto, shall be attached to this Agreement as if set forth herein at length. The said Trust Agreement shall provide for annual audited reports of the income and expenditures of the Fund. The payment of the employer contributions to the Fund shall be prescribed by the Trustees.

The benefits to be received by eligible employees are to be set forth in contracts with a responsible insurance carrier or carriers. The trustees shall furnish to contributing employers and all eligible employees a schedule and description of such Welfare Benefits and the eligibility rules which govern them.

The employer agrees to furnish the Trustees with all records pertaining to the names, classifications and social security numbers of the employees, their wages and such other information as may be required for proper and efficient administration.

The undersigned employer hereby agrees to accept as Employer Representatives of the Board of Trustees, the persons designated by Sheet Metal and Roofers Employers Association of Southeastern New York, Inc. The employer representative designated by such an Association shall, upon the acceptance of the Trusteeship, together with their successors selected in the manner provided in said Agreement and Declaration of Trust, represent the undersigned employer and other employers in the Administration of the Fund.

There shall be a trustee representing the independent contractors on all funds; said trustee to be selected by the independent contractors.

Eligible Employees as referred to herein, shall mean any Journeyman or Apprentice Sheet Metal Worker, member or apprentice of Local Union No. 38 as an Officer, Business Representative or Business Manager, or employed by the Welfare or Pension Funds and/or Vacation Plan as an Administrator or other employee capacity, and upon whom the required contributions are made by Sheet Metal Workers, Local Union No. 38 to the Welfare and Pension Funds and/or Vacation Plan. Limited coverage for Pensioners and their wives, shall also be provided by the Welfare Fund.

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Now, therefore, in consideration of the covenants, promises and agreements hereinafter contained the parties do hereby mutually agree as follows: (Pension Fund)

- (a) That a pension fund to provide retirement and pension benefits to all eligible employees employed by the contributing Employers who are parties to a collective bargaining agreement with the Union shall be established.
- (b) Each employer on and after the FIRST day of JULY 1973 shall pay monthly to the Trustees of the Pension Fund, hereinafter provided for, (See addenda (d) attached) of the gross weekly wages of the employees.
- (c) The said Pension Fund shall be administered pursuant to an Agreement and Declaration of Trust administered jointly by an equal number of representatives of the Employers and of the Union. A copy of this Agreement and Declaration of Trust, together with any amendments thereto, shall be attached to this Agreement and shall then be considered a part of this Agreement as if set forth herein at length. The said Trust Agreement shall provide for annual audited reports of the income and expenditures of the Fund. The payment of employer contributions to the Fund shall be made monthly on a date and in a manner and form that shall be prescribed by the Trustees.
- (d) The trustees shall proceed forthwith to enter into an Agreement and Declaration of Trust designed to carry out the purposes of this Agreement with respect to the providing of pension benefits to the covered employees.
- (e) The Agreement and Declaration of Trust shall set forth the powers of the Administration of the pension contributions provided for hereunder; provided, however, that no provision of said Agreement and Declaration of Trust shall conflict with any provisions hereof.
- (f) The Agreement and Declaration of Trust shall include, among other things, the rights and obligations of the Trustees to formulate a Pension Fund which will:
 - (1) Provide a Pension and Retirement Plan on an actuarially sound basis.
 - (2) Comply with the applicable Federal and State regulations with respect to the management and conduct of pension trust funds.
 - (3) Comply with the applicable rules and regulations of the Bureau of Internal Revenue with respect to tax deductability both for the Pension Fund and the contributions made by the Employer.
 - (4) Provide for appropriate provisions for the collective, custody and investment of the funds, that may come into the possession of the Trustees.

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Employers shall make available to the Pension Fund, either by mail or directly to an authorized representative, or certified public accountant of the Pension Fund, all wages and other data that the Pension Fund may require in connection with the sound and efficient operation of the Pension Fund.

The Trustees may lease or purchase such premises, materials, supplies and equipment and employ and retain such legal counsel, investment counsel, administrative, actuarial clerical, custodial and other assistants or employees as in their discretion the Trustees may deem necessary and appropriate and pay their reasonable expenses and compensation out of the Trust Fund.

No employee shall have the option to receive any of the Pension Fund Benefits other than those specifically provided for in the Pension Plan to be promulgated and adopted by the Trustees. No employee shall have any right to assign any benefits to which he may be or become entitled under the Agreement or Declaration of Trust or any Pension Plan or to receive a cash consideration in lieu of such benefits either upon the termination of the Trust therein created or through severance of employment or otherwise.

No employer shall be entitled to the return of said contributions.

The primary purpose of this Supplemental Agreement and the said Agreement and Declaration of Trust being provided within the limits of the contributions provided for herein, a practical plan for benefits for employees upon their retirement, it is understood that the form of the plan, and of this Supplemental Agreement and of the Agreement and Declaration of Trust shall not give rise to a literal or formal interpretation or construction; such interpretation or construction shall be placed on this Supplemental Agreement and the Agreement and Declaration of Trust, as will assist in the functioning of the plan, for the benefit of employees, regardless of form.

In the event that the obligation of the Employers to make employer contributions shall terminate, or upon the liquidation of the Trust Estate, the Trustees shall continue to apply the Trust Estate to the purpose specified in paragraph I hereof and none other, and upon the disbursement of the entire Trust Estate this Trust shall terminate.

The undersigned employer hereby agrees to accept as Employer Representative of the Board of Trustees the persons designated by the SHEET METAL AND ROOFERS EMPLOYERS ASSOCIATION OF SOUTHEASTERN NEW YORK, INC. The employer representatives designated by such an Association shall, upon the acceptance of the Trusteeship, together with their successors selected in the manner provided in said Agreement and Declaration of Trust, represent the undersigned employer and other employers in the Administration of the Fund.

There shall be a trustee representing the independent contractors on all funds; said trustee to be selected by the independent contractors.

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Eligible Employees as referred to herein, shall mean any Journeyman or Apprentice Sheet Metal Worker, member or apprentice of Local Union No. 38, including Journeyman Sheet Metal Workers, employed by Local Union No. 38 as an officer, Business Representative or Business Manager, or employed by the Welfare, Pension Funds and/or Vacation Plan as an Administrator or other employee capacity, and upon whom the required contributions are made by Sheet Metal Workers, Local Union No. 38 or the Welfare, Pension Funds and/or Vacation Plan.

Employers as referred to herein, shall mean, in addition to Sheet Metal Contractors, the Sheet Metal Workers, Local Union No. 38 and/or the Welfare, Pension and/or Vacation Plan of Sheet Metal Workers, Local Union No. 38.

COLLECTIVE BARGAINING CLAUSE-VACATION PLAN

Commencing with the payroll following the date hereto, the employers agree to pay (See Addenda (d) attached) of their gross payroll for all employees covered by this agreement to the Sheet Metal Worker's (of Local Union No. 38) Vacation Plan (hereinafter referred to as the "Vacation Plan".)

The contributions of the employers shall be used exclusively to provide Vacation Money to employees.

The said Vacation Plan shall be administered pursuant to an Agreement and Declaration of Trust, together with any amendments thereto, shall be attached to this Agreement and shall then be considered a part of this Agreement as if set forth herein at length, the said Trust Agreement shall provide for annual audited reports of the income and expenditures of the Fund. The payment of employer contributions to the fund shall be made monthly on a date and in a manner and form that be prescribed by the Trustees.

The benefits to be received by employees are to set forth in "RULES AND REGULATIONS GOVERNING SHEET METAL WORKERS INTERNATIONAL ASSOCIATION (LOCAL UNION No. 38) VACATION PLAN", as prepared by the Trustees and adopted by the Employers and the Local Union No. 38 membership. The Trustees shall furnish to contributing employers and all employees a copy of such Rules and Regulations for the Vacation Plan.

The employers agree to furnish the Trustees with all records pertaining to the names, classifications and social security numbers of the employees, their wages and such other information as may be required for proper and efficient administration. The undersigned employer hereby agrees to accept as Employer Representatives of the Board of Trustees, the persons designated by the SHEET METAL AND ROOFERS EMPLOYERS ASSOCIATION OF SOUTHEASTERN NEW YORK, INC. The employer representatives designated by each employer group or association shall, upon the acceptance of the Trusteeship, together with their successors selected in the manner provided in said Agreement and Declaration of Trust, represent the undersigned employer, and other employers in the administration of the VACATION PLAN.

There shall be a trustee representing the independent contractors on all funds; said trustee to be selected by the independent contractors.

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Eligible Employees as referred to herein, shall mean any Journeyman or Apprentice Sheet Metal Worker, member or apprentice of Local Union No. 38, including Journeyman Sheet Metal Workers, employed by Local Union No. 38 as an Officer, Business Representative or Business Manager, or employed by the Welfare, Pension Funds and/or Vacation Plan as an Administrator or other employee capacity, and upon whom the required contributions are made by Sheet Metal Workers, Local Union No. 38 or the Welfare, Pension Funds and/or Vacation Plan. Employers as referred to herein, shall mean, in addition to Sheet Metal Contractors, Sheet Metal Workers, Local Union No. 38.

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SHEET METAL WORKERS LOCAL UNION 38
Effective July 1, 1975 to December 31, 1975

NEW WAGE BASE: Journeyman	\$ 10.00	\$10.00
Foreman	11.00	
General Foreman	12.10	

CONTRIBUTIONS: (Increase)

Pension Fund (7%)	.70	
Insurance & Welfare (7.3%)	.73	
Vacation Fund (9%)	.90	
Dues Check-Off (1%)	.10	
Annuity Fund (7%)	.70	\$ 3.13
TOTAL CONTRIBUTIONS:		<u>\$13.13</u>

Not included in the above are contributions to:

SASMI (3%)	.39
Local Industry Fund 1 $\frac{1}{2}$ % of hourly wage	.15
National Training Fund .02¢ per hourly wage as per the collective bargaining agreement	.02
TOTAL	<u>\$13.69</u>

Taxable Items:

Base Wages	\$ 10.00	
Vacation Fund	.90	
Dues Check-Off	.10	
	<u>\$ 11.00</u>	Total Taxable Wages

APPRENTICESHIP BASE WAGE SCALE

1st term 45% = \$4.50 per hr.	5th term 65% = \$6.50 per hr.
2nd term 50% = \$5.00 per hr.	6th term 70% = \$7.00 per hr.
3rd term 55% = \$5.50 per hr.	7th term 75% = \$7.50 per hr.
4th term 60% = \$6.00 per hr.	8th term 80% = \$8.00 per hr.

Employer, Please note:

Effective January 1, 1976 to June 30, 1976

WAGE SCALE

Journeyman Rate	Pending
Foreman Rate	Pending
General Foreman	Pending



ELMSFORD SHEET METAL WORKS, INC.
HEATING - AIR CONDITIONING - VENTILATION
11-13 ROUTE 111 BROAD STREET - YERKSKILL, N. Y. 10566
(914) 797-9300

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September 3, 1975

Sheet Metal & Roofing Contractors Association
of Southeastern New York
40 Triangle Center
Yorktown Heights, New York

Gentlemen:

You may be sure that having been a member of the Sheet Metal & Roofing Contractors Association for the past 24 years, it is with the deepest regret that I feel compelled to resign from your association, effective midnight, June 30, 1975. You will note that my resignation is retroactive to the date of my original resignation, which was rejected by you because the negotiations had not been concluded at that particular time. I signed the new contract as a member of the negotiating committee, not as a member of your association.

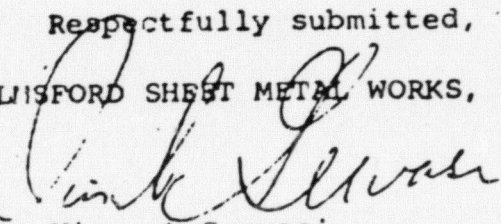
My reasons for resigning are; (1) I refuse to pay a tribute to SMACNA to be used and abused as we were at the NJAB, - merely to perpetuate the Industry Fund. (2) I feel that it is imperative that we disassociate ourselves from SMACNA prior to our next negotiations, in order to forestall, if possible, the perpetuation of Article 10, Sec. 8. (3) My company contributed approximately \$13,000. to the Industry Fund last year. With the new agreement, I have been led to believe that 1 1/2% is inadequate to maintain the Industry Fund, and that you will be requesting a larger amount at the next contract.

(Continued -

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EXHIBIT 5

I personally feel that the Industry Fund has become completely ineffective, as not one constructive program has been offered to the contractors since we increased our contributions by 50%, more than 2 years ago. I intend to start a new organization mainly for the purpose of eliminating the Industry Fund entirely and in addition, having an aggressive and more responsible negotiating team.

Respectfully submitted,
ELWISFORD SHEET METAL WORKS, INC.

Vincent Gervasi,
President

VG/vmf

ccs:

Local # 38
Members of SM&RE of S.E.N.Y.
SMACNA
Var. SM Contractors in area.

Arthur Udland



ELMSFORD SHEET METAL WORKS, INC.
COATING - AIR CONDITIONING - VENTILATION
11-13 SOUTH BROAD STREET - PEEKSKILL, N. Y. 10566

(914) 732-8300

PLEASE NOTE NEW ADDRESS

PEEKSKILL

10565

P.O. BOX #64

Registered
Return Receipt Requested

March 26, 1976

Sheet Metal Workers Local Union #38
898 Washington Avenue
Peekskill, N.Y. 10566

Att. Mr. Chas. Hertel

EXHIBIT 1

Gentlemen:

We would like to renegotiate our present contract which expires 6/30/76 as per Article XIII Section 1.

Following are some of the items we would like to negotiate:

1. Elimination of SASMI
2. " of Local & Nat'l Industry Funds
3. " of National Training Fund
4. " of Article X Section 8
5. " of all Travel Zones
6. Three year Contract. No increase in present wages or Fringe Benefits in first year.
7. Withhold pay for one week except for termination of employment.

We would like to meet with you at your convenience. Please be good enough to advise us when you would be able to do so.

Respectfully submitted

ELMSFORD SHEET METAL WORKS, INC.

Vincent Gervasi
Vincent Gervasi

VG/rr

EXHIBIT 6

Executive Office
Monday and Wednesday at 826 Washington St., Peekskill, N.Y. 10566
President, CHARLES V. HERTEL
Recording Secretary, KENNETH D. MCKEY
Treasurer, THOMAS WHELAN
Financial Secretary, RICHARD F. PAGANO

826 Washington St.
Peekskill, N.Y. 10566
914 - 0800
914 - 0801

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2
April 26, 1976

Blasford Sheet Metal Works, Inc.
4000 Arlo Lane P. O. Box 64
Peekskill, N. Y. 10556

EXHIBIT 2

Gentlemen:

We are in receipt of your proposal for a new Collective Bargaining Agreement and are enclosing with this letter a copy of our counterproposals.

You may be assured that prior to any strike, we will negotiate with you in good faith for the purpose of reaching an agreement.

Our Negotiating Committee is now fully engaged with the Employers Association and when the time is available, we will contact you and proceed to negotiate toward an agreement.

Very truly yours,

Charles V. Hertel

Charles V. Hertel
President & Business Manager

CVH:pf
Enclosure

CERTIFIED MAIL RETURN RECEIPT REQUESTED

EXHIBIT 7

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LOCAL UNION No. 38

Westchester (Rockland, Putnam, Dutchess, Orange, Ulster & Sullivan Counties, New York)

Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10560

1st Wednesday at 808 Washington St., Peekskill, N.Y. 10566

EARLES V. HERTZEL

Treasurer, THOMAS WHALEN

ry. KENNETH D. MIEUS

Financial Secretary, RICHARD F. PAGANO

898 W EXHIBIT 3

Peekskill

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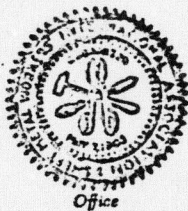
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1976 Negotiations
Final Draft

Local Union 38 is desirous of incorporating the following changes in our Agreement:

1. 1 Year Contract
2. \$1.00 an hour wage increase
3. 2% increase in Welfare, 2% in Vacation, 2% in Annuity
4. Salary to be paid in cash
5. Shop men to be paid 10% over basic pay rate
6. An amount of money necessary to reduce the pension to Age 60 with no reduction in the benefits as now supplied.
7. An amount of money necessary to grant a beneficiary benefit equal to the full amount of money that a member would be entitled to for five years.
8. One out of every 5 men employed to be over 50 years of age.
9. Eliminate the Industry Fund.
10. Employer to be considered delinquent if funds are not collected on the 1st day of the month following the month work was performed (i.e. contributions for work performed during June to be paid on July 1).
11. Ten cents (10¢) an hour Apprenticeship Training Fund.
12. Men working on fiberglass duct to be supplied with coveralls and respirators and this apparel to be cleaned by the employer.
13. When asbestos fire proofing is being performed on the job, men are to be supplied with masks and goggles.
14. On job sites, where 4 or more men are employed, a heated shanty will be provided.
15. Fan Maintenance will not be eliminated until after the complete system has been balanced.
16. In the use of duct jacks - there will be sufficient men to provide safety with a minimum of 3 men to a jack.

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Office
898 Washington St.
Peekskill, N.Y. 10568
914 - 739 - 0200
914 - 739 - 0201

Sheet Metal Workers' International Association

LOCAL UNION No. 38

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York

Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10568

Meets 3rd Wednesday at 898 Washington St., Peekskill, N.Y. 10568

President, CHARLES V. HERTZ

Treasurer, THOMAS WHALEN

Recording Secretary, KENNETH D. MIEUS

Financial Secretary, RICHARD F. PAGANO

2

Negotiations Continued
Final Draft

17. Add to Article II - No single line shop drawings or field drawings with less than $\frac{1}{8}$ " to the foot scale will be drawn or worked from.
18. Apprentices will have at least six months training by the companies for whom they work in the sketching department and six months on the bench fabricating materials.
19. All sheet metal workers and apprentices to be supplied with safety glasses. In addition, any man requiring corrective lens will be supplied with prescription safety glasses.
20. All sheet metal workers and apprentices to be supplied with leather working gloves.
21. Forbid the use of all power activated tools.
22. In the addendum concerning travel zone, eliminate the words Local Union 38 territory.
23. Add to Section B of Addendum to Article VI, at end of paragraph - "This hearing to be held within 72 hours of the time the steward is not re-hired. The same penalty as above shall apply."

53

LOCAL UNION No. 2

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York
Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10566
Meets 3rd Wednesday at 898 Washington St., Peekskill, N.Y. 10566

President, CHARLES V. HERTEL

Treasurer, THOMAS WHELAN

Recording Secretary, KENNETH D. MIEUS

Financial Secretary, RICHARD F. PAGANO

Office

898 Washington St.
Peekskill, N.Y. 10566
914 - 739 - 0200
914 - 739 - 0201

April 26, 1976

Mr. Allen
State of New York
State Mediation Board
270 Broadway
New York, N. Y. 10007

Gentlemen:

Enclosed is a copy of a letter that was mailed to us on
March 26, 1976.

This is also to advise you that Blasford Sheet Metal Works, Inc.,
has left the Employers' Association and we will negotiate on
an independent basis.

Very truly yours,

Charles V Hertel

Charles V. Hertel
President & Business Manager

CVH:pf
Enc.

CERTIFIED MAIL RETURN RECEIPT REQUESTED

EXHIBITS



Office
 696 Washington St.
 Peekskill, N.Y. 10566
 914 - 734 - 0200
 914 - 734 - 0201

Sheet Metal Workers' International Association

LOCAL UNION No. 38

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York
 Executive Board meets First Wednesday at 896 Washington St., Peekskill, N.Y. 10566
 Meets 3rd Wednesday at 896 Washington St., Peekskill, N.Y. 10566

President, CHARLES V. HERTZEL
 Recording Secretary, KENNETH D. MILES

Treasurer, THOMAS WHALEN
 Financial Secretary, RICHARD F. PALANO

2

April 26, 1976

Federal Mediation &
 Conciliation Service
 2937 Federal Bldg.
 26 Federal Plaza
 New York, N. Y. 10007

Gentlemen:

Enclosed is a copy of a letter that was mailed to us on March 26, 1976.

This is also to advise you that Elasford Sheet Metal Works, Inc., has left the Employers' Association and we will negotiate on an independent basis.

Very truly yours,

Charles V. Hertzel

Charles V. Hertzel
 President & Business Manager

CVH:pf
 Enc.

CERTIFIED MAIL RETURN RECEIPT REQUESTED

EXHIBIT 9

55

May 5, 1976

Elmsford Sheet Metal
4000 Arlo Lane
P. O. Box 64
Peekskill, N. Y. 10566

EXHIBIT 6

Gentlemen:

Please be advised that the Negotiating Committee has set aside Tuesday, May 11, 1976 to meet with Elmsford Sheet Metal pursuant to our letter sent to you dated April 26, 1976.

This meeting will be held at the Local Union 38 Office, 898 Washington Street, Peekskill, New York at 4 P. M..

Please advise and confirm.

Very truly yours,

Charles V. Hertel
Chairman
Negotiations Committee

CVH:pp

7

EXHIBIT 10

56

United Brotherhood of Carpenters and Joiners of America
LOCAL UNION No. 1
Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York
Executive Board meets First Wednesday at 868 Washington St., Peekskill, N.Y. 10566
Meets 3rd Wednesday at 868 Washington St., Peekskill, N.Y. 10566
President, CHARLES V. HERTZEL Treasurer, THOMAS WHALEN
Recording Secretary, KENNETH D. MIXON Financial Secretary, RICHARD F. PAGANO
2
May 11, 1976

Office
868 Washington St.
Peekskill, N.Y. 10566
914 - 739 - 0900
914 - 739 - 0201

Negotiations

1st Meeting with Elmsford Sheet Metal

**Negotiations
Elmsford:**

Unions:

Vince Gervasi, Joe Massaro, Charles Hertel, John McCabe, Edward J. Salch

The Union cannot accept any of the demands of Elmsford Sheet Metal.

1. Elmsford would agree to eliminate the Industry Fund.
2. Is in accord to support the Apprenticeship Training.

Talked about areas on non-productivity.

Respectfully submitted,

Edward J. Salch

Edward J. Salch
Negotiations Secretary

EJS:pf

EXHIBIT II

57



898 Washington St.
Peekskill, N.Y. 10566
914 - 739 - 0200
914 - 739 - 0201

Sheet Metal Workers International Association

LOCAL UNION No. 38

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York
Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10566
Meets 3rd Wednesday at 898 Washington St., Peekskill, N.Y. 10566

President, CHARLES V. HOFFER
Recording Secretary, KENNETH D. MIEUS
Treasurer, THOMAS WHALEN
Financial Secretary, RICHARD F. PAGANO

tiations

EXHIBIT 7

June 7, 1976

Re: Elmsford Sheet Metal

Second Meeting

Minutes of last Meeting accepted, with correction. Elmsford Sheet Metal is willing to negotiate a full binding contract - not an interim agreement. Struck word "no" added 1st.

1. Willing to go for 1 yr. contract.
\$ 1.00 total package - Wage increase 1 yr. Eliminate the Industry Fund. Eliminate travel zone - pay man \$ 2.00 a day to man jobs anywhere up to 60 mile board zone. Want Art. 10, Sec. 8 removed from contract. Wants pay week Monday to Friday. Pay day following Friday. Will pay 6¢ to Apprentice Training Fund. Eliminate National Industry Fund. OK'd Items 22, 23, 17. Would take off 8¢ an hour for Apprenticeship Training Fund.

Discussed 1 out of every 5 to be over 50 . Fan Maintenance . Talked about all the advantages non-union has without travel and high wages.

Duct jacks - 3 men discussed. Possible no duct jacks to be used unless three or more men are on the job.

Apprenticeship.

Safety Glasses are supplied by the Company.

Asbestos Fire Proofing.

Coveralls and respirators are supplied.

Caucus.

Union Caucus:

1 Acceptable
Will Accept Item 17, 22, 23.
Package Not Acceptable.

Respectfully submitted,

Edward J. Salch

Edward J. Salch
Negotiations Secretary
Union

9

EXHIBIT 12

58

FOR THE
SHEET METAL INDUSTRY
Decision

Local Union 38, SMWIA
898 Washington Street
Peekskill, New York 10566

Sheet Metal, Roofer Employers
Association of Southeastern New York, Inc.
40 Triangle Center, Suite 204
Yorktown Heights, New York 10598

ISSUE: ARTICLE X, Section 8 proceedings
to resolve remaining issues between
the parties

Gentlemen:

The National Joint Adjustment Board Subcommittee, composed of Edward F. Carlough representing SMWIA and James C. Champion representing SMACNA, met at Tarrytown, New York on July 27, 1976 to conduct a hearing on the above matter. Appearing on behalf of the parties:

Representing Local #38

Charles Hertel
Edward Salch
Thomas Whalen
Jack McCabe
Kenneth Mikus
Richard Pagano

Representing SMREA of
Southeastern New York

Don Ricci
John Brezovsky
Roy Seacor
Bill Freeman
Dan Supon
Carl Pasqualini

The unresolved issues were presented by both parties with questions and answers following. Based on the presentations and discussions held, the NJAB Subcommittee reached the following unanimous decisions:

1. A two (2) year agreement running from July 1, 1976 until June 30, 1978.

2. Economic increases will be as follows:

July 1, 1976	60¢ per hour
July 1, 1977	90¢ per hour

The above specified award shall include all economic adjustments including those on a percentage basis.

3. Delete the five (5) day minimum from Addendum to Article VI, Section E - Shift Work. The balance of the clause to remain unchanged.

EXHIBIT B

59

4. Effective August 2, 1976, travel zones to be as follows:

0 to 11.9 miles	Free Zone
12 to 17.9 miles	\$ 3.00
18 to 23.9 miles	4.00
24 to 29.9 miles	5.00
30 to 35.9 miles	6.00
36 to 41.9 miles	7.00
42 to 47.9 miles	8.00
48 to 53.9 miles	9.00
54 to 59.9 miles	10.00
60 miles and over to remain as written in present agreement.	

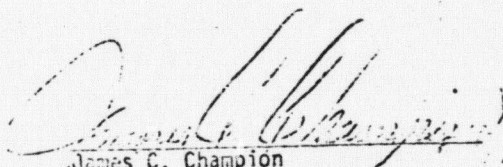
5. Add to Section B of Addendum to Article VI, at end of paragraph, "This hearing to be held within 72 hours of the time the steward is not rehired. The same penalty as above shall apply."
6. Special hours for Roofer Contractor employees to be able to work from 6:00 AM to 1:00 P.M.
7. Local Industry Funds to be increased to 2%.

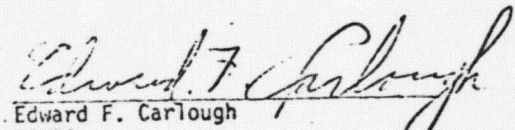
All remaining unresolved issues are denied.

Your attention is directed to the following language contained in the Procedural Rules of the HJAB covering the processing of cases under Article X, Section 8 of the SFUA:

"A unanimous decision of the Board shall be final and binding upon the parties, reduced to writing and mailed to the parties as soon as practicable after a decision has been reached."

BY ORDER OF THE BOARD SUBCOMMITTEE


James C. Champion
SHACNA


Edward F. Carlough
SMNIA

Aug. 2, 1976
Date

60

August 23, 1976

Binsford Sheet Metal
4000 Arlo Lane
P. O. Box 64
Peekskill, N. Y. 10566

EXHIBIT 8

Attn: V. Gervasi

Re: Negotiations

Gentlemen:

Please be advised that there will be a Negotiation Meeting on
Monday, August 30, 1976, at the Local Union 38 Office, 898
Washington Street, Peekskill, New York at 5 P. M..

Your attendance at this meeting will be greatly appreciated.

Very truly yours,

Charles Hertel
Chairman
Negotiations Committee

CVH:pf

cc: T. Whalen
K. Hikan

EXHIBIT 14

10



Office

898 Washington St.
Peekskill, N.Y. 10566
914 - 739 - 0200
914 - 739 - 0201

Sheet Metal Workers' International Association

LOCAL UNION No. 3

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York

Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10566

Meets 3rd Wednesday at 898 Washington St., Peekskill, N. Y. 10566

President, CHARLES V. HERTEL

Treasurer, THOMAS WHALEN

Recording Secretary, KENNETH D. MIEUS

Financial Secretary, RICHARD F. PAGANO

2

EXHIBIT 9

NEGOTIATIONS MEETING

August 30, 1976

ELMSFORD SHEET METAL, PEEKSKILL, N. Y.

Representing Local #38

Charles V. Hertel
John B. McCabe
Richard F. Pagano
Thomas Whalen

Representing Employer

Vincent Gervasi
Joseph Massaro

Meeting convened at 5:10 P. M.

Mr. Hertel opened the meeting by presenting facts of past meetings and the unaccepted items and asked if there were any new proposals.

Mr. Gervasi then stated that in the interest of trying earnestly to reach an agreement, offers would be made and if no agreement could be reached offers would then be retracted.

Mr. Hertel said the Union was ready to negotiate an agreement tonight on all unresolved issues no matter what length of time it would take.

Mr. Gervasi then presented a proposal -

1. Accept our demand for elimination of Industry Fund & National Industry Fund.
2. Eliminate Article 10, Section 8.
3. Accept two year contract on 60¢ for 1st year and 90¢ for 2nd year.
4. Will give 10¢ of Industry Fund in envelope and 4¢ to a man's fringe benefits and remaining 6¢ of total 20¢ to Apprentice Training Fund.

Employers left room.

Union took offer under discussion and then decided on a counter proposal.

EXHIBIT 15



Sheet Metal Workers International Association

LOCAL UNION No. 62

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York

Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10566

Meets 3rd Wednesday at 898 Washington St., Peekskill, N. Y. 10566

Office

898 Washington St.
Peekskill, N.Y. 10566

914 - 739 - 0200

914 - 739 - 0201

President, CHARLES V. HERTEL

Treasurer, THOMAS WHALEN

Recording Secretary, KENNETH D. MIKUS

Financial Secretary, RICHARD F. PAGANO

2

- 2 -

Mr. Gervasi and Mr. Massaro returned to the room and Mr. Hertel presented the newly signed agreement with the Employer's Assoc. in its entirety as being acceptable to Union.

Mr. Gervasi then referred to the legal aspect of being an independent contractor on Article 10, Section 8 and the Industry Fund and his attorney's interpretation as to the legality of his making contributions.

Mr. Gervasi and Mr. Massaro then left the room.

Union then discussed the items as presented and all agreed that the contract recently reached with the Employer's Assoc. and Standard Form of Union Agreement would only be acceptable in its entirety.

Mr. Hertel then stated Union's position on contract.

Mr. Gervasi then said he felt his position was one of being morally and legally right and will pursue this course of action. He then presented a proposal as being the same as stated before with modification of the 2% or 20¢ per hour of Industry Fund be contributed to the entire Apprentice Training Fund. This would maintain the same position on elimination of Article 10, Section 8.

Unacceptable to Union.

Mr. Gervasi and Mr. Hertel continued open discussion with committees on various points of differences on unresolved items.

Not being able to reach an agreement, a new meeting was scheduled for Tuesday, September 7th at 5:00 P. M. at Union office.

Meeting then adjourned at 6:45 P. M.

Respectfully Submitted,

Richard F. Pagano
78

Richard F. Pagano
Recording Secretary

cc: Elmsford Sheet Metal

63

August 31, 1976

Elmsford Sheet Metal
4000 Arlo Lane
P. O. Box 64
Peekskill, N. Y. 10966

EXHIBIT 10

Attn: V. Gervasi

Re: Negotiations

Gentlemen:

Please be advised that there will be a Negotiations Meeting on Tuesday, September 7, 1976, at the Local Union 38 Office, 898 Washington Street, Peekskill, N. Y. at 5 P. M..

Your attendance at this meeting will be greatly appreciated.

Very truly yours,

Charles V. Hertel
Chairman
Negotiations Committee

CWH:lpf

cc: T. Whalen
K. Mikus

12

EXHIBIT 16



Sheet Metal Workers International Association

LOCAL UNION No. 64

Westchester Rockland, Putnam Dutchess, Orange, Ulster and Sullivan Counties, New York
Peekskill, N.Y. 10566

Exec

Peekskill, N. Y. 10566

Pr.

EXHIBIT 11

Financial Secretary - Treasurer

THOMAS WHALEN

Office

898 Washington St.
Peekskill, N.Y. 10566

914 - 739 - 0200

914 - 739 - 0201

Record

Negotiations Meeting

Sept. 7, 1976

Elmsford Sheet Metal, Peekskill, N. Y.

Representing L. U. 38:

Charles V. Hertel
John B. Mc Cabe
Richard F. Pagano
Thomas J. Whalen

Representing Employer:

Vince Gervasi
Joe Massaro

Meeting convened at 5:30 P. M..

Mr. Hertel opened meeting with asking any changes in position of the Employer.

Mr. Gervasi then asked if any time limit was designated by NJAB in Article X, Section 8.

Mr. Hertel read the particular section applicable to what was asked.

Mr. Gervasi read a decision by a Trial Judge on Article X, Section 8 and Industry Fund and SASMI.

Voiced objections as to someone else being his bargaining agent.

Final Proposal:

Substantially as same as signed with Employers' Association.

Eliminate Industry Local & National

Eliminate Article 10, Section 8

Contribute to Apprentice Committee 6¢ per hour, directly.

Mr. Gervasi and Mr. Massaro left the room.

Union discussed proposal and decided to adhere to Article 10, Section 8.
Union's position is we are at a deadlock.

Mr. Gervasi feels they are not bound by the NJAB and will pursue course of action with the NLRB for the decision on an agreement.

Union will file for a decision by NJAB under Article 10, Section 8.



SHEET METAL WORKERS INTERNATIONAL ASSOCIATION

LOCAL UNION No. 38

0 estchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York
Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10566
Meets 3rd Wednesday at 898 Washington St., Peekskill, N. Y. 10566

65

Office
898 Washington St.
Peekskill, N.Y. 10566
914 - 739 - 0200
914 - 739 - 0201

President, CHARLES V. HERTEL
Recording Secretary, KENNETH D. MIKUS

Financial Secretary - Treasurer
THOMAS WHALEN

2

Re: Elmsford Sheet Metal

Sept. 7, 1976

Page 2

Mr. Hertel asked Mr. Gervasi of Elmsford Sheet Metal if he wanted to file jointly to the NJAB.

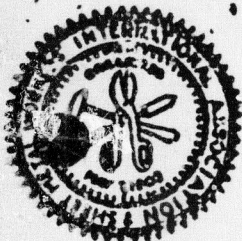
Mr. Gervasi stated that he preferred not to go before the NJAB because not being bound and feel that this is not a timely appeal.

Respectfully submitted,

Richard F. Pagano
Richard F. Pagano
Recording Secretary

RFP:pf

cc: Elmsford Sheet Metal



Office

898 Washington St.
Peekskill, N.Y. 10566
914 - 739 - 0200
914 - 739 - 0201

Sheet Metal Workers' International Association

LOCAL UNION No. 38

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York

Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10566

Meets 3rd Wednesday at 898 Washington St., Peekskill, N.Y. 10566

President, CHARLES V. HERTEL

Recording Secretary, KENNETH D. MIKUS

Financial Secretary - Treasurer

THOMAS WHALEN

~~2~~ 2

September 10, 1976

David S. Turner
General Secretary-Treasurer
Sheet Metal Workers International Association
1750 New York Ave., N. W.
Washington, D. C. 20006

Dear Sir & Brother:

Enclosed please find Application for Services of a Panel and Hearing under Article X, Section 3 of the Standard Form of Union Agreement.

Enclosed you will find twenty Copies of the Application, together with twenty Copies of the Standard Form of Union Agreement with Addendas.

You will also find twenty copies of the Minutes and Exhibits.

Trusting the enclosed is satisfactory.

With Best Wishes, I remain

Fraternally yours,

Charles V. Hertel

Charles V. Hertel
President & Business Manager

CVH:pf
Enclosures

cc: V. Gervasi

CERTIFIED MAIL RETURN RECEIPT REQUESTED

14

EXHIBIT 18

EXHIBIT "A"

APPLICATION FOR SERVICES OF
NATIONAL JOINT ADJUSTMENT BOARD
FOR THE SHEET METAL INDUSTRY

1. Names and Addresses of
Parties to Dispute:

- (a) Sheet Metal Workers'
Local Union 38
898 Washington St.
Peekskill, N. Y. 10566

Charles V. Hertel
President & Business Manager
UNION

- (b) Elmsford Sheet Metal Works
4000 Arlo Lane
P. O. Box 64
Peekskill, N. Y. 10566

Vincent Gervasi
President
EMPLOYERS

2. Nature of Dispute:

Anniversary of Agreement-
June 30, 1976. See enclosed
Minutes, Letters & Exhibits
for Explanation.

3. Attachments:

Application - 20 copies - Exhibit "A"
See Exhibits marked 1 thru 11
Findings and Decision are listed
in Exhibits. Also, see Exhibit 11

4. Date of Hearing before the Local Joint
Adjustment Board: None

Date: September 10, 1976

Charles V. Hertel

Charles V. Hertel
Sheet Metal Workers
International Association
Local Union 38

President & Business Manager

68

National Joint Adjustment Board
for the
Sheet Metal Industry

Sheet Metal Workers'
International Association
1000 Connecticut Avenue, N.W.
Washington, D. C. 20036

Sheet Metal and Air Conditioning
Contractors National Association, Inc.
1611 North Kent Street
Arlington, Virginia 22209

DECISION

Sheet Metal Workers'
Local Union # 38
898 Washington Street
Peekskill, N.Y. 10566

Elmsford Sheet Metal
4000 Arlo Lane
P. O. Box 64
Peekskill, N.Y. 10566

ISSUE: Article X, Section 8,
proceedings to resolve
issues remaining between
the parties.

Gentlemen:

The National Joint Adjustment Board (NJAB) met at Scottsdale, Arizona on November 9, 1976, to consider the above matter. Charles Hertel, Business Manager, appeared on behalf of the Local Union. There were no appearances on behalf of the employer, although the employer was duly notified and given the opportunity to testify.

The NJAB found that all procedural requirements had been met and the matter was, therefore, properly before it for decision.

The presentation to the Board and the written submissions of the parties demonstrated that agreement had been reached on all issues locally with the exception of:

1. The Union's request for the continued inclusion of Article X, Section 8 in the agreement and;
2. The Contractor's request for deletion of the requirement of contributions to the local and national industry funds. (Article VIII, Section 12 and 13.)

The record demonstrated that the parties had in all other respects agreed to the identical contract which is now in effect between the local union and SMREA of SENY, Inc., an association of contractors involved in the sheet metal industry within the local union jurisdiction.



EXHIBIT 19



Based upon the record and testimony, the NJAB reached the unanimous decision that the parties be directed to execute the identical contract signed by SMREA of SENY Inc., and Local Union #38. Thus, the contract will include Article X, Section 8 and Article VIII, Sections 12 and 13. The economic increases will be effective retroactively to the same dates as were required under the contract signed by SMREA of SENY, Inc.

Your attention is directed to the following language contained in the Procedural Rule of the NJAB covering the processing of cases under Article X, Section 8 of the S.F.U.A.

"A unanimous decision of the Board shall be final and binding upon the parties, reduced to writing and mailed to the parties as soon as practicable after a decision has been reached."

BY ORDER OF THE BOARD


Lee Schwartz, Chairman


David S. Turner, Secretary

DATE

Nov 11, 1976



Office
898 Washington St.
Peekskill, N.Y. 10568
914 - 739 - 0200
914 - 739 - 0201

Sheet Metal Workers' International Association

LOCAL UNION No. 38

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York
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President, CHARLES V. HERTEL
Recording Secretary, KENNETH D. MIKUS

Financial Secretary - Treasurer
THOMAS WHALEN



November 24, 1976

Elmsford Sheet Metal Works
4000 Arlo Lane
P. O. Box 64
Peekskill, N. Y. 10566

Dear Sir:

Due to the refusal of Elmsford Sheet Metal Works to abide by the decision of the National Joint Adjustment Board and sign the Standard Form of Union Agreement with attached addenda effective July 1, 1976 thru June 30, 1978, please be advised that effective December 1, 1976, Sheet Metal Workers' International Association Local Union 38 is no longer in signed agreement with Elmsford Sheet Metal Works.

Very truly yours,

Charles V. Hertel

Charles V. Hertel
President & Business Manager

CVH:pf

CERTIFIED MAIL RETURN RECEIPT REQUESTED

EX #20

71

Sheet Metal Workers' International Association

LOCAL UNION No 38

Westchester, Rockland, Putnam, Dutchess, Orange, Ulster and Sullivan Counties, New York

Executive Board meets First Wednesday at 898 Washington St., Peekskill, N.Y. 10566

Meets 3rd Wednesday at 898 Washington St., Peekskill, N.Y. 10566

President, CHARLES V. HERTEL

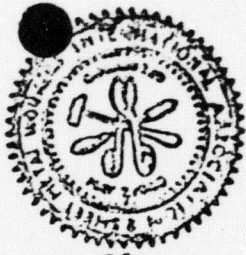
Financial Secretary - Treasurer

THOMAS WHALEN

Recording Secretary, KENNETH D. MIKUS



November 26, 1976



Office

898 Washington St.
Peekskill N.Y. 10566

914 - 739 - 0200

914 - 739 - 0201

Dear Sir & Brother:

Please be informed that you are not to report for work on Wednesday, December 1, 1976 for Elmsford Sheet Metal Works, 4000 Arlo Lane, P. O. Box 64, Peekskill, New York.

There will be a meeting on Wednesday, December 1, 1976, at 10 A. M., at the Local Union 38 Meeting Hall, 898 Washington Street, Peekskill, New York, at which time a report on the events leading to the above action will be presented.

Please make every effort to attend this very important meeting.

With Best Wishes, I remain

Fraternally yours,

Charles V. Hertel

Charles V. Hertel
President & Business Manager

CVH:pf

EXHIBIT 21

72
Singer + Silverstein

ATTORNEYS AT LAW

190 East Post Road

White Plains, New York 10601

FRANK SILVERSTEIN
ALAN D. SINGER

(914) 948-0314

December 1, 1976

National Labor Relations Board
Region 2
Federal Building Room 3614
26 Federal Plaza
New York, NY 10001
Att: Irwin Portnoy

Re: Elmsford Sheet Metal Works, Inc. v. Local 38

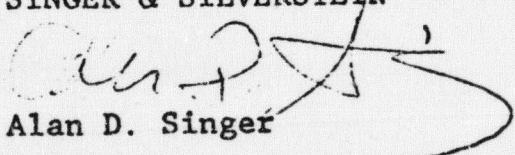
Dear Mr. Portnoy:

This is to confirm that our dispute with Local 38 has been temporarily settled and the strike action has been called off. Consequently, we hereby withdraw our application for 10J injunctive relief.

The terms of settlement are that we will enter into a collective-bargaining agreement with Local 38 absent the three disputed provisions; and in a separate letter agreement we will agree to be bound by a final determination upon the National Labor Relations Board complaint, with the result that should the complaint be dismissed at any stage, the contract will be amended to include the provisions so determined not to be violative of Federal law. Thank you for your cooperation.

Very truly yours,

SINGER & SILVERSTEIN


Alan D. Singer

ADS:fla

EX-137-22

73

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 38

and

Case 2--CB--6415

ELMSFORD SHEET METAL WORKS, INC.

DECISION AND ORDER

Upon charges duly filed on September 23, 1976, by Elmsford Sheet Metal Works, Inc., the Regional Director for Region 2 of the National Labor Relations Board, acting on behalf of the General Counsel of the Board, on November 5, 1976, issued a complaint alleging that the Respondent Union, Sheet Metal Workers International Association, Local Union No. 38 (hereafter Local 38), violated Section 8(b)(3) and Section 8(b)(1)(B) of the National Labor Relations Act, as amended (29 U.S.C. Sec 151, et seq.). The Respondent filed an answer to the complaint in which it admitted certain allegations of the complaint and denied others, including all those charging it with the commission of any unfair labor practices.

On January 12, 1977, the General Counsel, the Charging Party, and the Respondent entered into a stipulation in which they agreed to waive a hearing before an Administrative Law Judge, the issuance of an Administrative Law Judge's Decision, and the presentation of any evidence other than that contained in the stipulation and the exhibits there referred to. By order dated February 16, 1977, the Board approved the stipulation and transferred the proceeding to the Board. Thereafter the General Counsel and the Respondent filed briefs with the Board.

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The Board has considered the entire record in this case, including the parties' briefs, and makes the following findings and conclusions.

Findings of Fact

I. The Business of the Employer

Elmsford Sheet Metal Works, Inc. (hereafter Elmsford), has been at all times material a corporation duly organized under the laws of the State of New York with its principal place of business at Peekskill, New York, where it has been engaged as a contractor in the building and construction industry providing sheet metal contracting services and related services. Elmsford annually performs services valued in excess of \$500,000, of which services valued in excess of \$50,000 were performed in and for various enterprises outside the State of New York. Accordingly, in agreement with the stipulation of the parties, we find that the Company has been at all times material an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act. It will therefore effectuate the policies of the Act to assert jurisdiction in this proceeding.

II. The Labor Organization

It is stipulated, and we find, that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

Since in or about 1952 until in or about September 1, 1975, Elmsford was a member of the Sheet Metal and Roofers Employer's Association of Southeastern New York, Inc. (hereinafter the Association), an association which bargained collectively with the Respondent for the member's employees in a unit consisting of all journeymen and apprentice sheet metal employees. On June 30, 1975, Elmsford, by Vicent Gervasi,

ts president, sent a letter tendering its resignation from the Association. The Association rejected the resignation because negotiations were not concluded at that time. On July 1, 1975, the Association entered into a collective-bargaining agreement with Local 38, effective until June 30, 1976. The agreement contained provisions which required the employer to contribute to national and local industry funds (hereafter Industry Funds). ^{1/} It also contained a provision requiring any dispute arising out of the failure to renegotiate a renewal of the agreement be submitted to local and National Joint Adjustment Boards for a final and binding decision (hereafter interest arbitration). ^{2/} The local and National Joint Adjustment Boards consisted of an equal number of representatives of the local and international union and the local and national employer's associations.

On September 3, 1975, Elmsford sent a letter of resignation to the Association which was accepted, and on September 18, 1975, Elmsford signed a separate agreement with Local 38 effective until June 30, 1976. The September 18 agreement contained provisions identical to those in the Association agreement, including article VIII, sections 12(b) and 13(b), and article X, section 8.

On March 26, 1976, Elmsford sent a letter to Respondent indicating the desire to renegotiate the present contract and stating that among the items it would like to negotiate were the elimination of the provisions for industry funds and interest arbitration. On April 26, 1976, Respondent acknowledged receipt of Elmsford's proposals and made counterproposals. Respondent also notified the New York State Mediation Board and the Federal Mediation and Conciliation Service of the forthcoming negotiations.

^{1/} Art. VIII, Secs. 12(b) and 13(b). See Appendix B for full text.
^{2/} Art. X, sec. 8. See Appendix B for full text.

Elmsford and Local 38 held negotiation sessions on May 11, 1976, and on June 7, 1976. At both meetings Elmsford proposed the elimination of the provisions for industry funds and interest arbitration. Local 38 rejected these proposals at each meeting.

On July 27, 1976, the Association and Local 38 concluded a 2-year agreement running from July 1, 1976, until June 30, 1978. This agreement contained provisions for industry funds and interest arbitration which were identical to those in its July 1, 1975, agreement. When Elmsford and Local 38 met for a third negotiating session on August 30, 1976, Local 38 stated that it wanted Elmsford to agree to the terms of the Association agreement. Elmsford responded that it was not willing to agree to the provisions for industry funds and interest arbitration. Elmsford and Local 38 reasserted the same positions in their meeting on September 7, 1976, and Local 38 stated that they were at a deadlock.

On September 10, 1976, Local 38 filed an application for a hearing before the National Joint Adjustment Board (hereafter NJAB) under article X of its 1975--76 contract with Elmsford. The NJAB held a hearing on November 9, 1976. Local 38 was represented by its president and business manager, Charles Hertel. Elmsford did not appear. On November 11, 1976, the NJAB issued a decision finding that Elmsford was required to execute a contract with provisions requiring interest arbitration and industry funds.

On November 24, 1976, Local 38 informed Elmsford by letter that, due to Elmsford's refusal to abide by the decision of the NJAB, they were "no longer in signed agreement." On November 26, 1976, Local 38 sent a letter to Elmsford's employees informing them that they were not to report for work on December 1, 1976.

However, Local 38 called off the strike action on December 1, 1976, and the parties agreed to execute a collective-bargaining agreement without the disputed provisions. In a separate letter, the parties agreed to be bound by the final decision of the National Labor Relations Board on the instant complaint, with the result that, should the complaint be dismissed, the contract would be amended to include the provisions.

The General Counsel contends that interest arbitration and industry funds are nonmandatory subjects of bargaining and that, by insisting upon these subjects to impasse, Respondent violated Section 8(b)(3) of the Act. The General Counsel further contends that by its insistence upon the inclusion of the interest arbitration provision in the prospective bargaining agreement and by threatening to strike over the inclusion of the disputed provisions, Respondent violated Section 8(b)(1)(B) of the Act. The Respondent Union, on the contrary, contends that it did not insist on the inclusion of the disputed provisions to impasse, but merely acted in accordance with its existing contractual obligations by submitting the unresolved issues to the NJAB under article X, section 8, of the September 18, 1975, contract with Elmsford. The Respondent further contends that, even if it did insist upon the disputed provisions to the point of impasse, it did not thereby violate the Act because the provisions are mandatory subjects of bargaining:

For the reasons set forth below, we find that Respondent violated Section 8(b)(3) of the Act by insisting upon the inclusion of provisions for interest arbitration and industry funds in the bargaining agreement as a precondition for signing the agreement.

The mutual obligation of employers and unions to bargain in good faith as defined in Section 8(d) of the Act includes the requirement that they "... confer in good faith with respect to wages, hours, and other terms and conditions of employment. . . ." A provision which does not relate to these matters is a nonmandatory subject of bargaining and no party may insist upon its inclusion in the bargaining agreement to the point of impasse.^{3/} The Board has held that industry funds^{4/} and interest arbitration clauses^{5/} are nonmandatory subjects of bargaining. Here, Respondent's demand for both of these subjects resulted in the

^{3/} N.L.R.B. v. Wooster Division of Borg-Warner Corporation, 356 U.S. 342 (1958).

^{4/} Detroit Resilient Floor Decorators Local Union No. 2265 of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Mill Floor Covering, Inc.), 136 NLRB 769, 771, 772 (1962), enf'd. 317 F.2d 269 (C.A. 6, 1963).

With regard to industry funds, the Board has held that they are outside the employment relationship, since they concern themselves "with the relationship of employers to one another or, like advertising, with the relationship of an employer to the consuming public." As we have said, while we intend to keep pace, through interpretation of the general terms embodied in Sec. 8(d), with changing conditions "to insure that bargaining for new forms of 'wages' or for hitherto undeveloped terms or conditions of employment is not restricted," we are not empowered to lend our "sanctions of enforcement either to encourage or to discourage experimentation, through the bargaining process, in areas which are outside the employment relationship altogether, or which, at best, touch it only peripherally." Of course, our finding here does not imply that parties are not free to include provisions of this type in collective-bargaining agreements--only that there is no obligation that either party bargain thereon.

^{5/} The Columbus Printing Pressmen & Assistants' Union No. 252, Subordinate to IP & GCU (The R. W. Page Corporation), 219 NLRB 268 (1975); Greensboro Printing Pressmen and Assistants' Union No. 319 (The Greensboro News Company), 222 NLRB 893 (1976); Massachusetts Nurses Association (Lawrence General Hospital), 225 NLRB No. 91 (1976).

We note that every circuit court which has considered our view as to interest arbitration clauses has affirmed the Board's decisions and enforced its orders.

N.L.R.B. v. Massachusetts Nurses Association, 95 LRRM 2852 (C.A. 1 1977);

N.L.R.B. v. The Columbus Printing Pressmen and Assistants' Union No. 252, 543 F.2d 1161, 1164--66, (C.A. 5, 1976); N.L.R.B. v. Greensboro Printing Pressmen and Assistants' Union No. 319, 549 F.2d 308 (C.A. 4, 1977). In the words of the First Circuit, "[w]e agree with the conclusion of the Fifth and Fourth

circuits that an interest arbitration provision bears only a remote relation, if any, to wages, hours or other terms or conditions of employment and, accordingly, is not a mandatory subject of bargaining."

issuance of an NJAB decision in which Elmsford refused to participate, and subsequently refused to recognize, the Respondent's assertion that it was no longer in signed agreement with Elmsford because of Elmsford's refusal to recognize the NJAB decision, and Respondent's threat to strike if Elmsford did not agree to the NJAB decision requiring the inclusion of the disputed provisions in the new bargaining agreement.

In these circumstances, we find that Respondent insisted upon the nonmandatory subjects of industry funds and interest arbitration to impasse and thereby violated Section 8(b)(3) of the Act.

We further find that Respondent's conduct constituted a violation of Section 8(b)(1)(B) of the Act. In a previous case involving this same international, the Board found that the Union's insistence upon the inclusion of an interest arbitration clause identical to that in the instant case restrained and coerced the employer in its choice of a representative for the purposes of collective bargaining in violation of Section 8(b)(1)(B).^{6/} The circumstances presently before us closely parallel those of Sheet Metal Workers Association, Local Union No. 59, supra, and, for the reasons set forth therein, we conclude that Respondent violated Section 8(b)(1)(B) by its insistence to impasse on the inclusion of an interest arbitration clause in its prospective bargaining agreement with Elmsford. Respondent's threat to strike as a means to compel Elmsford to accept interest arbitration in the future bargaining agreement is further support for our finding that Respondent restrained and coerced Elmsford in the selection of its own bargaining representative.

^{6/} Sheet Metal Workers International Association, Local Union No. 59, 227 NLRB No. 90 (1976).

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent as set forth above, occurring in connection with the Employer's operations, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in violations of Section 8(b)(3) and Section 8(b)(1)(B) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act. Since the Respondent has violated Section 8(b)(3) of the Act by insisting to a point of impasse for the inclusion in a contract of nonmandatory subjects of bargaining, and since the obligation to bargain continues after impasse, the further insistence that the nonmandatory subjects of bargaining be arbitrated is, in effect, a continuation of the same violative conduct. We therefore order that the Respondent bargain in good faith and cease and desist from such insistence for arbitration of the nonmandatory subjects of bargaining.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Sheet Metal Workers International Association, Local Union No. 38, Peekskill, New York, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to bargain in good faith with Elmsford Sheet Metal Works, Inc., by insisting to a point of impasse, as a condition of reaching a new collective-bargaining agreement with Elmsford, on a continuation of the nonmandatory subjects

of bargaining contained in article X, section 8 (interest arbitration) of the bargaining agreement which expired on June 30, 1976.

(b) Refusing to bargain in good faith with Elmsford Sheet Metal Works, Inc., by insisting to a point of impasse, as a condition of a new collective-bargaining agreement with Elmsford, on a nonmandatory subject of bargaining contained in article VIII, sections 12(b) and 13(b) (industry funds), of the bargaining agreement which expired on June 30, 1976.

(c) Refusing to bargain in good faith with Elmsford Sheet Metal Works, Inc., by entering into and continuing negotiations with a fixed mind and position not to arrive at a collective-bargaining agreement without the inclusion of article VIII, sections 12(b) and 13(b), and article X, section 8, of the collective-bargaining agreement which expired on June 30, 1976.

(d) Restraining or coercing Elmsford Sheet Metal Works, Inc., in the selection of their representatives for the purposes of collective bargaining by insisting on the continuation in a new bargaining agreement of the provisions contained in article X, section 8, of the collective-bargaining agreement which expired on June 30, 1976.

(e) Insisting on compliance with, or attempting to enforce, the award of the National Joint Adjustment Board of November 11, 1976, including the threat to strike, insofar as that award determines the terms and conditions of a new collective-bargaining agreement between the Respondent Union and Elmsford Sheet Metal Works, Inc.

(f) In any like or related manner restraining or coercing Elmsford Sheet Metal Works, Inc., in the selection of their bargaining representatives for the

purposes of collective bargaining, or in any like or related manner refusing to bargain collectively with Elmsford by insisting upon the inclusion in the collective-bargaining agreement of provisions or proposals not related to wages, hours, and other terms or conditions of employment.

2. Take the following affirmative action to remedy the unfair labor practices found herein and to effectuate the policies of the Act:

(a) Bargain with Elmsford Sheet Metal Works, Inc., concerning the wages, hours, and other terms and conditions of employment for employees in the following appropriate bargaining unit.

All journeymen and apprentice sheet metal workers employed by Elmsford Sheet Metal Works, Inc., excluding supervisors as defined in the National Labor Relations Act.

(b) Notify Elmsford Sheet Metal Works, Inc., that the Respondent Union will not insist to impasse, as a condition of a new collective-bargaining agreement, on continuation of the provisions of article X, section 8, and article VIII, sections 12(b) and 13(b), of the bargaining agreement which expired on June 30, 1976.

(c) Post at Respondent Union's offices and meeting halls, copies of the attached notice marked "Appendix A".^{7/} Copies of said notice, on forms provided by the Regional Director for Region 2, after being duly signed by the Respondent Union's representative, shall be posted by it immediately upon receipt thereof,

^{7/} In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

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and be maintained by the Respondent Union for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to insure that said notices are not altered, defaced, or covered by any other material.

(d) Sign and mail sufficient copies of said notice to the aforesaid Regional Director for posting by Elmsford Sheet Metal Works, Inc., if it is willing, said notice to be posted in all locations where notices to employees are customarily posted.

(e) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps the Respondent Union has taken to comply herewith.

Dated, Washington, D.C. August 29, 1977

Howard Jenkins, Jr., Member

John A. Penello, Member

Peter D. Walther, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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CHAIRMAN FANNING, dissenting:

I do not find this case significantly different from Sheet Metal Workers International Association, Local Union No. 59, 227 NLRB No. 90. Accordingly, for the reasons set forth in my opinion in that case, I would dismiss the complaint here.

Dated, Washington, D.C. August 29, 1977

John H. Fanning, Chairman

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MEMBER MURPHY, dissenting:

Contrary to my colleagues, I would find that the Sheet Metal Workers did not violate Section 8(b)(3) and (1)(B) and would dismiss the complaint in its entirety.

With respect to the alleged violations of Section 8(b)(3), I would find that the provisions for interest arbitration and industry funds which the Respondent sought to include are mandatory subjects of bargaining and Respondent was therefore free to insist to impasse upon their inclusion. In this regard, I reemphasize and reassert my views on the mandatory nature of interest arbitration which are set forth at length in my dissenting opinion in The Columbus Printing Pressmen and Assistants' Union No. 252, Subordinate to IP & GCU (The R. W. Page Corporation), 219 NLRB 268 (1975).

Any issue which settles an aspect of the relationship between the employer and employees^{8/} concerning wages, hours, working conditions, or other terms or conditions of employment is a mandatory subject for bargaining. That an interest arbitration provision does so is beyond dispute, for by its very nature it provides a peaceful judicial-type procedure in place of economic warfare as a means of settling any such aspect of the employment relationship upon which there may be disagreement. Its provision for the continuing effectiveness of established contract terms throughout the negotiation period for renewal thereof and the assurance of continued employment to workers and uninterrupted production to the employer are the very essence of the bargaining relationship and the protection of employer-employee interests. Further, the subject matter of

^{8/} Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co., Chemical Division, et al., 404 U.S. 157, 178 (1971).

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bargaining must reflect the changing conditions of industrial society and the changing needs and responsibilities of labor and management. I am persuaded that interest arbitration does reflect such conditions and advances public policy favoring the voluntary resolution of disputes and the avoidance of economic warfare.^{9/} In my view, it clearly is the collective-bargaining tool of the future, and I am surprised by the unwillingness of my colleagues to find it a mandatory subject of bargaining.

In the case of industry funds, I am, of course, aware that the Board has consistently held that such funds are nonmandatory subjects. In my opinion this is also an incorrect view and is inconsistent with other of the Board's holdings in the area of mandatory subjects of bargaining. The stated purpose of the industry funds in the instant case is "... to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the sheet metal industry, improve the technical and business skills

9/ See Winston-Salem Printing Pressmen and Assistants' Union v. Piedmont Publishing Company, of Winston-Salem 393 F.2d 221 (C.A. 4, 1968); Aikens v. Abel, 373 F.Supp. 425 (W.D.Pa. 1974); and Chattanooga Mailers' Union, Local No. 92 v. The Chattanooga News-Free Press Company, 524 F.2d 1305 (C.A. 6, 1975). A provision which contributes to the avoidance of economic warfare between labor and management is, in my view, directly linked to the conditions of employment and is therefore a mandatory subject of bargaining. I am aware, however, that the First, Fourth, and Fifth Circuits have affirmed the Board's finding that interest arbitration provisions are nonmandatory subjects of bargaining. N.L.R.B. v. Massachusetts Nurses Association, 95 LRRM 2852 (C.A. 1, 1977); N.L.R.B. v. Greensboro Printing Pressmen and Assistants' Union No. 319, 549 F.2d 308 (C.A. 4, 1977); N.L.R.B. v. The Columbus Printing Pressmen and Assistants' Union No. 252, 543 F.2d 1161 (C.A. 5, 1976). In my opinion, these decisions fail to recognize that interest arbitration promotes the public policy favoring avoidance of industrial strife, and should not be followed.

of employers, stabilize and improve Employer-Union relations, and promote, support,
and improve the employment opportunities for employees. . . ."^{10/} As the Board has
stated in the past, such an industry fund can affect employees' opportunities in
the long run.^{11/} Nevertheless the Board has erroneously held here that such funds
are nonmandatory subjects of bargaining, reasoning that to make a matter a
mandatory subject of bargaining simply because it might conceivably enhance the
prospects of the industry would transform bargaining over the compensation, hours,
and employment conditions of employees into a debate over policy issues.^{12/}

The flaw in this logic is that industry funds are not ambiguous matters
which have only an arguable connection with the enhancement of the industry.
Rather, the sole purpose of the funds is to promote the industry, and thereby
improve employment opportunities for unit employees through increased business
opportunities for the employer. Furthermore, no one can question that education,
research, and promotion are rationally related to this goal. Whether or not these
means actually succeed is not and never has been a measure of whether a subject
is one upon which the parties are compelled to bargain. Many provisions in contracts
dealing with mandatory subjects have only speculative value. Thus, the future value
of the stock in a stock purchase plan is uncertain. Similarly, the future value
to employees of the employer's contributions under a pension plan is dependent
upon the continued existence of the employer, the survival of the employees to

^{10/} Art. VIII, secs. 12(a) and 13(a). This is consistent with the types of
objectives sought by most such funds.

^{11/} Detroit Resilient Floor Decorators Local Union No. 2265 of the United Brotherhood
of Carpenters and Joiners of America, AFL-CIO (Mill Floor Covering, Inc.), 136
NLRB 769 (1962), enfd. 317 F.2d 269 (C.A. 6, 1963).

^{12/} Detroit Resilient Floor Decorators Local Union No. 2265, supra.

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retirement age, and the inflationary trend of the economy. Yet the Board has long held that these items are mandatory subjects of bargaining affecting employees' potential income.^{13/}

A consistent approach requires that industry funds also be found mandatory subjects since they equally affect unit employees' potential income by attempting to assure the continued existence of business for the employer and the resulting job opportunities for unit employees.^{14/} I would so find.

With respect to the alleged violation of Section 8(b)(1)(B), I find that an interest arbitration provision does not restrain or coerce an employer in the selection of its own bargaining representatives. There is nothing inherently unlawful about the voluntary agreement to preclude bargaining of the parties themselves as to the final resolution of disputed matters on which impasse has been reached. Here, Elmsford voluntarily agreed to the interest arbitration provision in its September 18, 1975, agreement with Local 38, even though it was aware of the fact that it was not represented on the National Joint Adjustment Board. Since interest arbitration is, in my view, a mandatory subject of bargaining, I find that Respondent's insistence upon it to the point of impasse, and Respondent's threat to strike to attain Elmsford's acceptance of the NJAB decision requiring inclusion of interest arbitration and industry fund provisions in the new bargaining agreement, did not constitute a violation of Section 8(b)(1)(B).

13/ Richfield Oil Corporation, 110 NLRB 356 (1954), enfd. 231 F.2d 717 (C.A.D.C., 1956) (stock purchase plans); Inland Steel Company, 77 NLRB 1 (1948), enfd. 170 F.2d 247 (C.A. 7, 1948), cert. denied 336 U.S. 960 (1948) (pension plans).

14/ See my dissenting opinion in Sheet Metal Workers International Association, Local Union No. 59 (Employers Association of Roofers and Sheet Metal Workers, Inc.), 227 NLRB No. 90 (1976).

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Accordingly, I dissent from the findings that the Respondent violated
Section 8(b)(3) and (1)(B).

Dated, Washington, D.C. August 29, 1977

Betty Southard Murphy, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain in good faith with Elmsford Sheet Metal Works, Inc., by insisting to a point of impasse, as a condition of reaching a new collective-bargaining agreement, on the continuation of the nonmandatory subjects for bargaining contained in article X, section 8 (interest arbitration), of the bargaining agreement which expired on June 30, 1976.

WE WILL NOT refuse to bargain in good faith with Elmsford Sheet Metal Works, Inc., by insisting to a point of impasse, as a condition of a new collective-bargaining agreement, on the continuation of the nonmandatory subjects for bargaining contained in article VIII, sections 12(b) and 13(b) (industry funds) of the bargaining agreement which expired on June 30, 1976.

WE WILL NOT refuse to bargain in good faith with Elmsford Sheet Metal Works, Inc., by entering into and continuing negotiations with a fixed mind and position not to arrive at a collective-bargaining agreement without the inclusion of article VIII, sections 12(b) and 13(b), and article X, section 8, of the bargaining agreement which expired on June 30, 1976.

WE WILL NOT restrain or coerce Elmsford Sheet Metal Works, Inc., in the selection of their representatives for the purposes of collective bargaining by insisting on the continuation in a new bargaining agreement of the provisions contained in article X, section 8, of the bargaining agreement which expired on June 30, 1976.

WE WILL NOT insist on compliance with, or attempt to enforce, the award of the National Joint Adjustment Board of November 11, 1976 including the threat to strike, insofar as that award determines the terms and conditions of a new collective-bargaining agreement between Sheet Metal Workers International Association, Local Union No. 38, and Elmsford Sheet Metal Works, Inc.

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WE WILL NOT in any like or related manner restrain or coerce Elmsford Sheet Metal Works, Inc., in the selection of their bargaining representatives for the purposes of collective bargaining, or in any like or related manner refuse to bargain collectively with Elmsford by insisting upon the inclusion in the collective-bargaining agreement of provisions or proposals not related to wages, hours, and other terms or conditions of employment.

WE WILL bargain with Elmsford Sheet Metal Works, Inc., concerning the wages, hours, and other terms and conditions of employment for employees in the following appropriate bargaining unit.

All journeymen and apprentice sheet metal workers employed by Elmsford Sheet Metal Works, Inc., excluding supervisors as defined in the National Labor Relations Act.

WE WILL notify Elmsford Sheet Metal Works, Inc., that we will not insist to impasse as a condition of a new collective-bargaining agreement on continuation of the provision of article X, section 8, and article VIII, sections 12(b) and 13(b), of the bargaining agreement which expired on June 30, 1976.

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL UNION NO. 38
(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor, Federal Building, 26 Federal Plaza, New York, N.Y. 10007, Telephone 212--264--0360.

APPENDIX B

ARTICLE VIII

SECTION 12(a). Contributions provided for in Section 12(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the sheet metal industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support, and improve the employment opportunities for employees. No part of any such payments, however, shall be used for political activities or to oppose officially stated policy, or officially endorsed programs, or to interfere in any way in the internal affairs of the Sheet Metal Workers' International Association or of any affiliated local union.

(b) The employer shall pay the Sheet Metal and Air Conditioning Contractors' National Industry Fund of the United States (IFUS) two cents (\$0.02) per hour for each hour worked on and after the effective date of this agreement by all employees of the employer covered by this Agreement. Payment shall be made on or before the 20th day of the succeeding month and shall be remitted to IFUS, 1611 North Kent Street, Arlington, Virginia, 22209, or for the purpose of transmittal, through SMREA OF SENY, INC.

(Name of local remitting organization)

SECTION 13(a). Contributions provided for in Section 13(b) of this Article will be used to promote programs of industry education, training, negotiation and administration of collective bargaining agreements, research and promotion, such programs serving to expand the market for the services of the Sheet Metal Industry, improve the technical and business skills of employers, stabilize and improve Employer-Union relations, and promote, support, and improve the employment opportunities for employees. No part of any such payments, however, shall be used for political activities or to oppose officially stated policy or officially endorsed programs or to interfere in any way in the internal affairs of the Sheet Metal Workers' International Association or of any affiliated local union.

(b) The Employer shall pay to the Sheet Metal Industry Fund of Westchester & Vicinity
(Name and address of local industry fund)

(hereinafter referred to as the local industry fund), 1-1/2% cents (\$0.) per hour for each hour worked on or after the effective date of this Agreement by all employees of the employer covered by this Agreement. Payment shall be made monthly on or before the 20th day of the succeeding month.

ARTICLE X

SECTION 8 In addition to the settlement of grievances arising out of interpretation or enforcement of this agreement as set forth in the preceding sections of this Article, any controversy or dispute arising out of the failure of the parties to negotiate a renewal of this agreement shall be settled as hereinafter provided:

(a) Should the negotiations for renewal of this agreement become deadlocked in the opinion of the Local Union or of the Local Contractors' Association, or both, notice to that effect shall be given to the office of the General President of Sheet Metal Workers International Association and the national office of the Sheet Metal & Air Conditioning Contractors' National Association, Inc. If the General President of Sheet Metal Workers' International Association and the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. believe the dispute might be adjusted without going to final hearing before the National Joint Adjustment Board, each will then designate a panel representative who shall proceed to the locale where the dispute exists as soon as convenient, attempt to conciliate the differences between the parties and bring about a mutually acceptable agreement. If such panel representatives or either of them conclude that they cannot resolve the dispute, the parties thereto and the General President of Sheet Metal Workers' International Association and the national office of Sheet Metal and Air Conditioning Contractors' National Association, Inc. shall be promptly so notified without recommendation from the panel representatives. Should the President of Sheet Metal Workers' International Association or the Chairman of the Labor Committee of Sheet Metal and Air Conditioning Contractors' National Association, Inc. fail or decline to appoint a panel member or should notice of failure of the panel representatives to resolve the dispute be given, the parties shall promptly be notified so that either party may submit the dispute to the National Joint Adjustment Board.

The dispute shall be submitted to the National Joint Adjustment Board pursuant to the rules as established and modified from time to time by the National Joint Adjustment Board. The unanimous decision of said Board shall be final and binding upon the parties, reduced to writing, signed and mailed to the parties as soon as possible after the decision has been reached. There shall be no cessation of work by strike or lockout unless and until said Board fails to reach a unanimous decision and the parties have received written notification of its failure.

(b) Any application to the National Joint Adjustment Board shall be upon forms prepared for that purpose subject to any changes which may be decided by the Board from time to time. The representatives of the parties who appear at the hearing will be given the opportunity to present oral argument and to answer any questions raised by members of the Board. Any briefs filed by either party including copies of pertinent exhibits will also be exchanged between the parties in advance of the hearing.

(c) The National Joint Adjustment Board shall have the right to establish time limits which must be met with respect to each and every step or procedure contained in this section. In addition, the President of SMWIA and the Chairman of the National Labor Committee of SMACNA shall have the right to designate time limits which will be applicable to any particular case and any step therein which may be communicated to the parties by mail, telegram, or telephone notification.

(d) Unless a different date is agreed upon mutually between the parties or is directed by the unanimous decision of the National Joint Adjustment Board, all effective dates in the new agreement shall be retroactive to the date immediately following the expiration date of the expiring agreement.

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE
NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS
PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by an Administrative Law Judge of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Administrative Law Judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record -- for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the Administrative Law Judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the Administrative Law Judge for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Administrative Law Judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Administrative Law Judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Administrative Law Judge will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Administrative Law Judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Administrative Law Judge may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the Administrative Law Judge who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Administrative Law Judge will be considered unless received by the Chief Administrative Law Judge in Washington, D. C. (or in cases under the San Francisco, California branch office of the Division of Judges, the Presiding Judge in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Administrative Law Judge or Presiding Judge as the case may be. All briefs or proposed findings filed with the Administrative Law Judge must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Administrative Law Judge will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Administrative Law Judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Administrative Law Judge's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Administrative Law Judge will afford reasonable opportunity during the hearing for discussions between the parties if adjustment appears possible, and may himself suggest it.

